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TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945

No. 435

EMORY S. LAND, INDIVIDUALLY AND AS CHAIRMAN OF THE UNITED STATES MARITIME COMMISSION, ET AL., PETITIONERS,

vs.

WATERMAN STEAMSHIP CORPORATION

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

PETITION FOR CERTIORARI FILED SEPTEMBER 18, 1945
CERTIORARI GRANTED NOVEMBER 5, 1945

SUPREME COURT OF THE UNITED STATES

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In the United States Court of Appeals, District of Columbia

No. 8862

WATERMAN STEAMSHIP CORPORATION, APPELLANT

v.

EMORY S. LAND, INDIVIDUALLY AND AS CHAIRMAN, UNITED STATES MARITIME COMMISSION, ET. AL., APPELLEES

Appeal From the District Court of the United States for the District of Columbia.

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 In the District Court of the United States for the District of Columbia

Civil Action No 24840

WATERMAN STEAMSHIP CORPORATION, MERCHANTS NATIONAL BANK BUILDING, MOBILE, ALABAMA, PLAINTIFF

v.

EMORY S. LAND, INDIVIDUALLY AND AS CHAIRMAN, UNITED STATES MARITIME COMMISSION, COMMERCE BUILDING, WASHINGTON, D. C.

THOMAS M. WOODWARD, INDIVIDUALLY AND AS CHAIRMAN OF THE PRICE ADJUSTMENT BOARD OF THE MARITIME COMMISSION, COMMERCE BUILDING, WASHINGTON, D. C.,

A. G. RYDSTROM, INDIVIDUALLY AND AS A MEMBER OF THE PRICE ADJUSTMENT BOARD OF THE MARITIME COMMISSION, ELECTRICAL WORKERS BUILDING, 15TH AND M STREETS, N. W., WASHINGTON, D. C.

JOHN R. PAULL, INDIVIDUALLY AND AS A MEMBER OF THE PRICE ADJUSTMENT BOARD OF THE MARITIME COMMISSION, ELECTRICAL WORKERS BUILDING, 15TH AND M STREETS, N. W., WASHINGTON, D. C., AND

CARMAN G. BLOUGH, INDIVIDUALLY AND AS A MEMBER OF THE PRICE ADJUSTMENT BOARD OF THE MARITIME COMMISSION, RAILROAD RETIREMENT BUILDING, WASHINGTON, D. C., DEFENDANTS

Complaint for injunction and for a declaratory judgment

(Filed June 27, 1944)

Plaintiff respectfully alleges and shows to this Court as follows:

3 (1) Plaintiff, Waterman Steamship Corporation, is a corporation organized and existing under and by virtue of the laws of the State of Alabama, having its principal office and place of business in the City of Mobile, in the State of Alabama.

(2) Defendant Emory S. Land is the Chairman of the United States Maritime Commission (hereinafter referred to as the "Commission") and as such is the official authorized and directed by the Act of Congress hereinafter referred to, to require the renegotiation of the contract price, and to eliminate excessive profits on contracts entered into with the Commission. He is sued herein as defendant individually and in his official capacity as such Chairman.

(3) Defendant Thomas M. Woodward is the Chairman of the Price Adjustment Board of the Maritime Commission, a Board created by and functioning as a part of the Commission. He is sued herein as defendant individually and in his official capacity as such Chairman of the Price Adjustment Board of the Maritime Commission.

(4) Defendants A. G. Rydstrom, John R. Paull, and Carman G. Blough are members of the Price Adjustment Board of the Commission. They are sued herein as defendants individually and in their official capacity as members of such Board.

(5) The Price Adjustment Board of the Commission (hereafter referred to as the "Board") was created by the Commission by its Administrative Order No. 64, dated May 5, 1942, for the purposes of carrying out the provisions of Section 403 of the Sixth Supplemental National Defense Appropriation Act of 1942 (Public Law No. 528, 77th Congress) approved April 28, 1942, as amended, (hereinafter referred to as the "Renegotiation Act") insofar as it relates to renegotiation of contracts and subcontracts entered into with the Commission. Said Administrative Order provides in substance and among other things that the Board shall

possess the function and be charged with the respon-
4 sibility of bringing about such review of contract and subcontract prices as it may deem desirable, renegotiating or causing to be renegotiated such contract prices when in its judgment such action is necessary or desirable, and making such recommendations to the Commission as may be appropriate to effectuate the results of such renegotiations. A copy of said Administrative Order is attached hereto and marked "Exhibit A." and made a part hereof as though fully set forth herein.

(6) There exists an actual and immediate controversy between the parties hereto, and the plaintiff brings this action for the purpose of enjoining the enforcement by the defendants and

operation of the aforesaid Renegotiation Act against the plaintiff for the reason that said Renegotiation Act is not applicable to the contracts hereinafter more particularly described, and for a declaratory judgment declaring that said contracts are not subject to the provisions of the Renegotiation Act as aforesaid. The matter in controversy exceeds, exclusive of interest and costs, the sum of $3,000.00.

(7) Plaintiff employs and for many years prior to 1941 has employed the accrual method of bookkeeping, and keeps its accounts and makes its federal income and excess profits tax returns on the basis of a fiscal year ending September 30.

(8) Plaintiff was at all times hereinafter mentioned and prior thereto engaged in the business of owning steamships and until all its vessels were requisitioned by the War Shipping Administration, was engaged in the operation of said vessels in general trades. Its vessels were purchased and have at all times since the enactment of the Merchant Marine Act, 1936, been operated by it wholly without governmental financial aid in any form.

(9) The plaintiff as owner of the steamships hereinafter mentioned and on the dates specified, entered into charter agreements with the British Ministry of War Transport, an agency of the British Government, an alien within the meaning of the Shipping Act, as amended, chartering the space of said vessels at the rates and under the terms and conditions provided in said charter agreements, a copy of one of said charter agreements being attached hereto and made a part hereof as though fully set forth herein, and marked "Exhibit B," the terms and conditions of all of said charter agreements on the following vessels being identical to said "Exhibit B":

Vessel	Date of charter agreement
Antinous	April 25, 1941
Iberville	April 25, 1941
Bienville	April 25, 1941
Jean Lafitte	April 25, 1941
Andrew Jackson	May 24, 1941
West Kyska	May 26, 1941
Ipswich	July 10, 1941

(10) The plaintiff as owner of the steamships hereinafter mentioned and on the dates specified, entered into charter agreements with the British Ministry of War Transport, an agency of the British Government, an alien within the meaning of the Shipping Act, 1916, as amended, chartering the space of said vessels at the rates and under the terms and conditions provided in said charter agreements, a copy of one of said charter agreements being attached hereto and made a part hereof as though fully set forth herein, and marked "Exhibit C," the terms and conditions

of all of said charter agreements on the following vessels being identical to said Exhibit C:

Vessel:	Date of charter agreement
Beauregard	August 16, 1941.
Lafayette	August 16, 1941.
Gateway City	September 24, 1941.
Lasalle	September 24, 1941.

6 (11) The plaintiff, as agents for the Pan Atlantic Steamship Corporation, the owner of the Steamship "Pan Kraft," on the 25th day of April 1941, entered into a charter agreement with the British Ministry of War Transport, an agency of the British Government, an alien within the meaning of the Shipping Act, 1916, as amended, chartering the space of the said S. S. "Pan Kraft" at the rates and under the terms and conditions provided in said charter agreement, a copy of which is attached hereto and made a part hereof as though fully set forth herein and is marked "Exhibit D."

(12) The said charter agreements entered into between the plaintiff and the British Ministry of War Transport as aforesaid were approved by the United States Maritime Commission pursuant to the provisions of Section 9 and Section 37 of the Shipping Act, 1916, as amended (46 U. S. C. Section 808 and Section 835), which makes unlawful, without the approval of the Commission, the chartering of any vessel owned by a citizen of the United States to any person not a citizen of the United States, said approval being upon the conditions set forth in the Commission's Resolution with respect thereto, of May 29, 1941.

(13) The plaintiff is informed and believes and therefore avers that the United States or a department or agency thereof entered into an arrangement, agreement, or contract with the British Government or an agency thereof with respect to payments required to be made to the plaintiff by the British Ministry of War Transport, under the form of charter agreements entered into by the plaintiff with the British Ministry of War Transport. The details of said arrangement, agreement, or contract are unknown to plaintiff, except as the same are set forth in a letter from the Office for Emergency Management, an agency of the United States, to the British Merchant Shipping Mission, dated the 9th day of June 1941, a copy of which letter is attached hereto and made a part of this complaint as though fully set forth herein, and
7 marked "Exhibit E." The plaintiff was not a party to, nor was it consulted with respect to the arrangement, agreement, or contract aforesaid, and took no part in the discussions or negotiations which led to its consummation.

(14) The plaintiff prior to the enactment on April 28, 1942 of the said Renegotiation Act, received final payment of the charter hire on each of said vessels on the dates hereinafter set forth, and completed its obligations to the charterer under the terms of said charter agreements, and said charters were terminated on the respective dates following:

Vessel	Date of payment of charter hire	Termination or completion date of charter agreement
Antinous	July 2, 1941	July 23, 1941
Bayville	July 14, 1941	August 19, 1941
Bienville	July 2, 1941	August 8, 1941
Jean Lafitte	August 2, 1941	September 4, 1941
Andrew Jackson	September 13, 1941	October 20, 1941
West Kyska	August 2, 1941	October, 5 1941
Ipswich	September 27, 1941	November 9, 1941
Beauregard	November 5, 1941	December 27, 1941
Lafayette	October 30, 1941	December 12, 1941
Gateway City	November 28, 1941	January 1, 1942
Lasalle	November 26, 1941	January 26, 1942
Pan Kraft	August 2, 1941	August 22, 1941

(15) On November 26, 1943, the defendants, purporting to act under the authority of the said Renegotiation Act, and under the Joint Statement by the War, Navy and Treasury Departments and the Maritime Commission issued pursuant to the provisions of the Renegotiation Act, served notice on the plaintiff in the form of a letter, that on December 13, 1943, they would commence the renegotiation of the aforesaid charter agreements and demanded that the plaintiff forward to them certain statements, information and financial data specified therein. A copy of said letter and Joint Statement are attached hereto and marked
8 "Exhibits F and G," respectively, and made a part hereof as though fully set forth herein.

(16) On December 13, 1943, the plaintiff by letter delivered on that date, advised the defendants in part as follows: that plaintiff would not furnish the information requested in the aforesaid letter of the defendants and would not agree to the renegotiation of said charter agreements, for the reasons that said agreements were not entered into with any "Department" as defined in said Renegotiation Act, but were agreements entered into directly and solely with the British Ministry of War Transport, an agency of the British Government, an alien within the meaning of the Shipping Act, 1916, as amended; that said Renegotiation Act provides that no contract made with a "Department" as defined in the Act shall be subject to renegotiation where final payment pursuant to such contract was made prior to April 28, 1942, and that since the said charter agreements had been completed and final payments of the charter hire, pursuant to said charter agree-

ments, were made prior to April 28, 1942, said charter agreements were not subject to the provisions of the Renegotiation Act; that the said Renegotiation Act provides that no renegotiation of any contract shall be commenced more than one year after the close of the fiscal year of the contractor within which completion or termination of the contract, as determined by the Secretary of the Department, occurs, and that more than one year after the close of the fiscal year of the plaintiff, within which said charter agreements were completed and terminated, had expired prior to such purported commencement of renegotiation. A copy of said letter is marked "Exhibit H," attached hereto and made a part hereof, as though fully set forth herein.

(17) By letter dated May 23, 1944, the defendants replied and advised the plaintiff that with respect to the Red Sea operation, it had been determined there was in each case a con-
9 tract between the vessel owner, the plaintiff, and the Maritime Commission to which the Renegotiation Act is applicable, and demanded that the plaintiff submit to the defendants certain statements, information, and financial data in accordance with the proposed outline for such information and financial data attached to said letter, and requiring the plaintiff to appear at a conference with the Commission's Price Adjustment Board on June 29, 1944, for the purpose of determining what portion of the profits of the plaintiff under the aforesaid charter agreements is excessive within the meaning of the Renegotiation Act. A copy of said letter and attachments are marked "Exhibit I" attached hereto and made a part hereof as though set forth fully herein.

(18) The plaintiff avers that the assumption of authority and jurisdiction by the defendants purportedly under the provisions of said Renegotiation Act to require the plaintiff to submit statements, information and data with respect to, and to renegotiate said charter agreements is arbitrary and capricious and without warrant in law for the reasons that said Renegotiation Act is wholly inapplicable to the said agreements between the plaintiff and the British Ministry of War Transport because said agency of the British Government is not a "Department," as defined in said Renegotiation Act but is an alien within the meaning of the Shipping Act, 1916, as aforesaid; that even though said agency of the British Government could be shown to be a "Department" within the meaning of the Renegotiation Act, said Act provides that no contract shall be subject to renegotiation where final payment pursuant thereto was made prior to April 28, 1942; that no renegotiation of any contract subject to said Renegotiation Act shall be commenced more than one year after the close of the fiscal

year of the contractor within which completion or termination of the contract, as determined by the Secretary of the Department, occurs; that final payment of the charter hire under each of said charter agreements aforesaid was made prior
10 to April 28, 1942; that within the meaning of the Renegotiation Act and the Joint Statement aforesaid, the plaintiff's obligations under the aforesaid charter agreements were completed and said charter agreements were terminated within the fiscal years of the plaintiff which ended September 30, 1941 and September 30, 1942, respectively; that any arrangement, agreement or contract between the United States or any department or agency thereof, and the British Government or any agency thereof with respect to payments required to be made to the plaintiff by the British Ministry of War Transport under the terms of the charter agreements aforesaid is not subject to the provisions of the Renegotiation Act, which specifically provides that any contract by a Department with any foreign government or agency thereof shall not be subject to renegotiation.

(19) Notwithstanding the provisions of said Renegotiation Act and the fact that said charter agreements were not entered into by the plaintiff with any "Department," as defined in said act, the defendants, purporting to act in their official capacities aforesaid, and purportedly under the provisions of said Renegotiation Act intend to and will, unless the relief prayed herein is granted, unlawfully require the plaintiff to furnish said defendants with the statements, information, and financial data specified in their letters dated November 26, 1943, and May 23, 1944, copies of which are attached to this petition as Exhibits "F" and "I," respectively, and unlawfully require the renegotiation of said charter agreements, or unlawfully make a unilateral determination of alleged excess profits under the charter agreements aforesaid, and refix the contract price or charter hire thereunder, and unlawfully withhold amounts due the plaintiff from the United States, thereby depriving the plaintiff of its property without due process of law in contravention of the Fifth Amendment to the Constitution of the United States. Plaintiff under said act
11 must either furnish the statements, information and financial data demanded by the defendants and submit to renegotiation which is final and conclusive, or the defendants will make a unilateral determination which cannot be appealed (except for the purpose of seeking a redetermination of the amount so determined), or to be subjected to civil suits against it for the recovery of any amounts the defendants may so unlawfully determine as alleged excessive profits, or be subjected to criminal prosecution for failure to submit the statements, in-

formation and data demanded by defendants, and a possible penalty or a fine and imprisonment against it or its officers and employees.

(20) Plaintiff avers that the defendants are without any power or authority in law to require the plaintiff to submit the statements, information, and financial data demanded by them, or to require the renegotiation of said charter agreements, or to make a unilateral determination of alleged excessive profits with respect to the aforesaid charter agreements, or to refix the contract price or charter hire under the charter agreements aforesaid, and said threatened action on their part is without warrant of law, capricious and arbitrary, and beyond the scope of their authority under the said Renegotiation Act.

If the plaintiff should furnish to the defendants the statements, information, and data demanded by them as aforesaid, and comply with the requirement of the defendants to commence renegotiation of the charter agreements aforesaid, the plaintiff would be in danger of being estopped, and counsel for the plaintiff has advised it that a court might hold that it would be estopped to deny the authority of the defendants under the said Renegotiation Act to require renegotiation of the aforesaid charter agreements, or to make a unilateral determination of alleged excessive profits and refix the contract price or charter hire under said charter agreements, or to secure a judicial determination of the applicability of the provisions of the Renegotiation Act to the charter agreements aforesaid, or the invalidity of the acts of the defend-

12 ants purportedly thereunder. Moreover, the penalties provided in the Renegotiation Act for noncompliance with the demands of the defendants to submit the statements, information, and data as aforesaid, and for failure to commence renegotiation of and to renegotiate the said charter agreements, as required by the defendants would impose upon the plaintiff the burden of obtaining a judicial decision of the validity of the demands of the defendants heretofore shown, only upon the condition that if unsuccessful, the plaintiff must pay excessive penalties and have moneys due the plaintiff from the United States withheld for the payment of such sums as the defendants may determine to be excessive profits under said charter agreements, and be subjected to civil suits for the recovery of such sums. Such penalties are so severe as in effect to close all approaches to the Courts, and deprive the plaintiff of any adequate remedy at law in the premises.

(21) Unless injunctions as prayed herein be granted, which shall in substance restrain and enjoin the defendants individually and in their official capacities as aforesaid, from requiring the

plaintiff to submit the aforesaid statements, information, and financial data demanded by the defendants, and from commencing renegotiation and renegotiating said charter agreements, or refixing the contract price or charter hire thereunder, and which shall restrain and enjoin said defendants individually and in their respective official capacities from giving effect to and enforcing the provisions of the Renegotiation Act with respect to the aforesaid charter agreements, the plaintiff will suffer immediate and irreparable injury, that is to say: the plaintiff will be subjected to a possible fine and imprisonment against it or its officers and employees, under the penal provisions of the Renegotiation Act and to the expenditure of large sums of money in defense of criminal prosecutions against it for alleged violation of the requirement that it furnish the statements, information, and data demanded by the defendants with respect to the aforesaid
13 charter agreements; and by the defendants arbitrarily, and without any power or authority in law, making a unilateral determination under the purported authority of said Renegotiation Act that the plaintiff is indebted to the United States for large sums of money the amounts of which are unknown to the plaintiff, as alleged excessive profits, and will withhold or cause to be withheld from amounts due the plaintiff from the United States such sums so unlawfully determined, thereby depriving the plaintiff of its property without due process of law, in contravention of the Fifth Amendment to the Constitution of the United States, or will institute civil action against the plaintiff to recover the sums so unlawfully determined, and thus involve the plaintiff in a multiplicity of suits either as plaintiff or defendant, thereby causing great expense and loss of money and time to the plaintiff, all of which said injuries and damages would be incapable of admeasurement and adjudication in an action at law.

(22) Plaintiff avers that there does not exist any plain, speedy, adequate, or complete remedy at law for the protection of its lawful rights and property and the prevention of the irreparable injury and irrecoverable damages thereto, except in a suit of this nature and by the injunctive and other processes and judgments of this court.

Wherefore, the plaintiff prays:

(1) That this Court issue immediately its temporary restraining order against the defendants and each of them individually and in their respective official capacities above set forth and all persons acting or assuming to act under their direction, enjoining and restraining them until the further order of this court from

(a) Requiring the plaintiff to furnish the statements, information and financial data demanded in the aforesaid letters of the

Board dated November 26, 1943, and May 23, 1944, or from requiring the plaintiff to commence renegotiation, or to renegotiate the aforesaid charter agreements entered into between the plaintiff and the British Ministry of War Transport;

(b) Determining or attempting to determine in any manner, that any of the payments or any portion thereof made to the plaintiff under the terms of said charter agreements represent "excessive profits" as such term is defined in the Renegotiation Act;

(c) Refixing or attempting to refix the contract price or charter hire of any of the said charter agreements;

(d) Withholding or instructing or requesting the United States or any instrumentality, agency, officer or agent of the United States to withhold any moneys due or to become due to plaintiff from the United States or any agency or instrumentality thereof under contracts with the United States or any agency or instrumentality thereof or otherwise;

(e) Further proceeding in any manner whatsoever to enforce the provisions of the Renegotiation Act against the plaintiff with respect to the aforesaid charter agreements entered into by it with the British Ministry of War Transport.

(f) Causing to be initiated criminal prosecutions against the plaintiff, its officers or employees for failure to furnish the statements, information, and financial data demanded by defendants with respect to the charter agreements entered into by the plaintiff with the British Ministry of War Transport.

(2) That such temporary restraining order be continued in force as an interlocutory injunction until final determination of this action.

(3) That upon final hearing of this cause, the interlocutory injunction herein prayed for be made permanent.

(4) That the Court, pursuant to the provisions of the Federal Declaratory Judgment Act, Title 28 U. S. C., Section 400, declare and decree that the aforesaid charters entered into by the plaintiff with the British Ministry of War Transport, an agency of the British Government, are not subject to the provisions of the Renegotiation Act and that said Renegotiation Act is unenforceable against the plaintiff with respect to said charter agreements and that the demand to submit statements, information and financial data, and the purported commencement of renegotiation proceedings by the defendants with respect thereto, is invalid and unauthorized in law.

(5) That the plaintiff have such other and further relief as the nature of the case may require and as to the court may seem just and proper.

BON GEASLIN,
ALLEN J. KROUSE,
Attorneys for Plaintiff,
520 Investment Building, Washington, D. C.

[Duly sworn to by J. W. O. Von Herbulis, jurat omitted in printing.]

Exhibit A

United States Maritime Commission, Washington

Administrative Order No. 61

To All Employees of the United States Maritime Commission:

For the purpose of carrying out the provisions of Section 403 of the Sixth Supplemental National Defense Appropriation Act of 1942, insofar as relates to renegotiation of contract and subcontracts thereunder and for related purposes, there is hereby created a Board to be known as the "Price Adjustment Board of the Maritime Commission."

The Board shall consist of a Commissioner of the Maritime Commission to be designated by the Chairman of the Commission, a representative of the Division of Finance to be designated by the Director of Finance with the approval of the Maritime Commission, and a third member who shall be selected with the approval of the Chairman of the War Production Board as his representative. Additional members of the Board shall be appointed by the Commission from time to time should it appear advisable. The Commission member shall act as Chairman of the Price Adjustment Board.

The Board is hereby charged with responsibility for bringing about such review of contract and subcontract prices as it may deem to be desirable, renegotiating, or causing to be renegotiated, such contract prices when, in its judgment, such action is necessary or desirable, and making such recommendations to the Commission as may be appropriate to effectuate the results of such renegotiations.

The Board is also instructed whenever appropriate to function jointly with representatives or agencies of the Navy Department, the War Department, the War Production Board, and other Departments or Agencies of the Government.

To that end, the Board shall have the collaboration of the Commission's Purchase and Supply, Production, Finance, and Legal Divisions, and of such other officers and divisions of the Commission as may be appropriate, and in cases where it appears that costs or profits of contractors or subcontractors are, or may be excessive for any reason, shall initiate and be responsible for suitable action with a view to securing adjustments and refunds.

The Board shall exercise such other powers not inconsist-
17 ent with this order as may be delegated to it by the Commission or by the Chairman of the Commission. The Construction Review and Analysis Section of the Division of Finance, in conjunction with the General Auditor of Construction will act as fact-finding agency for the Price Adjustment Board, and will, upon the request of the Price Adjustment Board, conduct, or cause to be conducted, investigations into the cost and profits of any contracts or subcontracts in which the Commission is interested.

The Price Adjustment Board, the Construction Review and Analysis Section and the Commission's General Auditor of Construction are authorized to make use of the facilities of the Securities and Exchange Commission, Federal Trade Commission, and other proper departments or agencies of the Government in securing and assembling information.

The Price Adjustment Board is also authorized to call upon the Cost Analysis Section of the War Production Board to conduct general surveys of the profits and costs of holders of war contracts and industry-wide studies of a like nature, and through the Secretary of the Commission may request the Bureau of Internal Revenue to make available its services, with the approval of the Secretary of the Treasury, for the purpose of making examinations and determinations with respect to profits under such contracts or subcontracts. No audit shall be made pursuant to Executive Order No. 9127 without first advising the Cost Analysis Section of the War Production Board. This provision, however, does not apply to audits made in the normal course of the Commission's business otherwise than pursuant to such Executive Order.

All cost analysis reports and all information obtained from contractors, or otherwise by or for the Price Adjustment Board of the Maritime Commission, shall be available at all times to the corresponding Price Adjustment Boards of the War and Navy Departments and to the War Production Board.

18 Where contractors have contracts with either or both of the War and Navy Department, as well as with the Commission, the Price Adjustment Board of the Commission shall

agree with the Price Adjustment Board or Boards of the Departments involved as to how and by whom negotiations shall be conducted.

The Board shall keep a written record of each action taken by it. The Board may delegate to any one or more of its members the power to initiate investigations, request information and assistance on behalf of the Board and to represent the Board in negotiations with contractors.

By Order of the

UNITED STATES MARITIME COMMISSION,
(Sgd.) W. C. PEET, JR., *Secretary.*

MAY 5, 1942.

Exhibit B

CHARTER

JULY 10, 1941.

It is this day mutually agreed between Waterman Steamship Corporation Owners of the Steamship S. S. "Ipswich" of 3,448 tons net register, classed First Class American Bureau of Shipping now trading and British Ministry of War Transport Charterers, as follows:

1. That the said steamship, being tight, staunch, and strong, and in every way fitted for the voyage and, according to Builders' scale and plan, which Owners believe to be correct but do not guarantee, has 425,788 cubic feet bale space available for cargo and shall load at not more than two United States Atlantic Coast ports, north of Cape Hatteras, but not east of Portland, Maine, according to custom of port, a cargo of lawful merchandise, which Charterers shall furnish subject to Clause 25, and being so loaded shall therewith proceed as ordered when Bills of Lading
19 are signed to not exceeding two ports of discharge in the Gulf of Aden and the Red Sea range not beyond Suez, or so near thereunto as she may safely get and there, always afloat, deliver the cargo as customary, at such wharf, dock or other good and safe place as Charterers' Agents may direct on arrival, in consideration whereof Charterers shall pay the vessel freight as follows:

Seventy-five cents (75c). United States Currency, net per cu. ft., on the bale cargo capacity, as above stated.

For on-deck cargo Sixty cents (60c). United States Currency net per cu. ft. on cubic measurement of such cargo carried.

Entire freight to be prepaid, without discount, and except as provided in clause 2 (Two), to be considered as earned and not returnable, vessel and/or cargo lost or not lost.

If the Charterers find it necessary to discharge at port or ports other than in the range named above then the Charterers may order the vessel to discharge at not exceeding two ports in any one of the following ranges: Capetown-Mombasa, Persian Gulf, Karachi-Bombay.

If under these circumstances vessel discharges in ranges last named, the Owners shall refund to Charterers the following sums:

(a) Port or ports in Capetown-Mombasa range—Thirty cents (30c) per cubic foot bale space on which original freight was paid and Twenty-four cents (24c) per cubit foot of cubic measurement of on-deck cargo;

(b) Port or ports in Persian Gulf Twenty cents (20c) per cubic foot bale space on which original freight was paid and Sixteen cents (16c) per cubic foot of cubic measurement of on-deck cargo;

(c) Port or ports in Karachi-Bombay range Twenty-five cents (25c) per cubic foot bale space on which original freight was paid and Twenty cents (20c) per cubic foot of cubic measurement of on-deck cargo.

Vessel shall not be required to discharge in more than one range.

Confirmation of discharging ports as ordered on sailing to be given on vessel's arrival off Mombasa within 12 hours. If longer detained awaiting orders, such additional time to count as lay days.

2. If by reason of changed conditions the Owners and Charterers agree, or in case of disagreement, the United States Maritime Commission determines, that the voyage shall not be prosecuted further or not completed, and the vessel is not lost and does not discharge at a port or ports, Capetown or beyond, adjustment of freight shall be made on the basis of U. S. $2,250 per day vessel is used by Charterer.

3. Steamer to have liberty to sail with or without pilots, and to tow and assist vessels in all situations. Steamer to have liberty to call at any port or ports en route or not, for fuel, and or supplies.

4. Charterers to have the privilege of designating wharves, or other good and safe places for loading or discharging. The cargo to be brought to, and taken from alongside the steamer, at Charterers' risk and expense, any custom of the port to the contrary notwithstanding. Lighterage, if any, at discharging port for the account of the cargo. Steamer to supply steam to drive winches, and to give use of gear on board vessel, also to load or discharge at night, on Sundays or holidays or on day when notice is given if required by Charterers. Charterers to pay all ex-

penses and labor incurred on cargo, including overtime to crew for cargo working purposes.

5. Charterers are to load, stow, and trim the cargo at their own expense, under the direction of the Master. Charterers to pay all port charges incidental to the outward cargo at loading port or ports, including elevating, stevedore, tallying, watching, clerking, top-wharfage, and to provide and fill sacks required to secure bulk grain, also all necessary shifting boards, dunnage, and
21 dunnage mats, if required, but Owners to pay all other charges at loading port.

6. Charterers' Agents to pay cost of discharging cargo, and all port charges incidental to the cargo at the discharging port or ports to which steamer may be ordered, but the Owners to pay all other charges at the discharging port or ports.

7. Charterers to have use of any dunnage or mats, etc., as may be aboard.

8. The steamer shall be consigned to Charterer's Agents at ports of loading and discharge, and shall employ their Broker to attend to the ship's business.

9. The Charterer's Agents shall sign Bills of Lading in behalf of the Master as and when presented, without prejudice to this charter party. The Captain, officers, and crew of the vessel in supervising loading, stowing, trimming, tallying and discharge of cargo shall be deemed the agents of the Charterers, except in so far as such supervision pertains to the safety of the vessel. Except as otherwise provided in this Charter, neither the vessel nor the Owner shall be liable for shortage, damage, breakage, leakage, shrinkage, or any other condition in respect to cargo arising without the actual fault and privity of the Owner and without the fault or neglect of Agents or servants of the Owner.

10. Lay days at port or ports of loading to commence on the day following receipt by Charterer's Agents of Captain's written notice of readiness whether vessel is in berth or not. Should the Steamer not be ready to load on or before noon of August 30, 1941, the Charterers have the option of cancelling this charter party. Lay days at port or ports of discharge to commence on the day following receipt by Charterer's Agents of Captain's written notice of readiness, whether vessel is in berth or not.

11. If the Steamer be not sooner dispatched cargo to be loaded and discharged in a total of twelve (12) running days. Should the cargo not be loaded at loading port or discharged at
22 port of distination within the specified time, for each and every day over and above said lay days, Charterers are to pay, day by day, the sum of $2,250 United States Currency, per day demurrage, any detention through Quarantine to vessel not

to count in lay days. Lay days allowed for loading and discharging are reversible. Lay days not to include time steaming between ports.

12. The Clauses herein regarding payment of port charges, stevedores, etc., at ports of loading and discharge refer only to such charges as are ordinarily incurred, any extra expenses caused by the steamer being under average, are to be adjusted in the usual way. All spaces to be placed at Charterer's disposal, which would be used for cargo, if loading for Owner's account, and where cargo has been carried before.

13. Throughout this charter-party the following are always mutually excepted: The Act of God; perils or accidents of the sea; causes beyond the shipowners or charterers control; restraint or interference or compliance with any directions whatsoever by any Government; fire from any cause whatsoever or wheresoever occurring, unless caused by the actual fault or privity of the Owner or Charterers, as the case may be; war, hostilities, rebellion or civil commotion even though existing or anticipated when this charter is made or any bills of lading signed or voyage commenced hereunder; enemies, pirates, riots, strikes, lockouts, stoppage, shortage or lack of labor or labor troubles of the shipowner's employees or others; fault or error in the management or navigation of the vessel; unseaworthiness, latent or other defect even though existing at delivery or beginning of any volage not resulting, however, from Owner's want of due diligence. Notwithstanding anything to the contrary in this charter-party, the Owner shall be entitled to any exemptions from or limitations of liability afforded by any statute or rule of law for the time being in effect.

14. Owners shall furnish Charterers with a copy of Vessel's scale and plan showing cubic capacities of all holds and spaces upon signing of this charter-party.

23 15. The bale capacity of 425,788 cubic feet, according to builder's plan includes deep tank with a total bale capacity of (no deep tank) cubic feet. Freight is not payable on the deep tank space unless cleaned, fitted, and in every way made useable for cargo by Owners.

16. This charter-party includes, and all bills of lading issued hereunder shall include, subject to clause 1 of this charter, Chamber of Shipping War Clauses 1/2/3 August 1937:

WAR RISK CLAUSE

"1. The Master shall not be required or bound to proceed to any blockaded port or for any port which the Master or Owners in his or their discretion consider dangerous or impossible to enter or to reach nor to sign bills of lading for any such port.

"2. (A) If any port of discharge named in this charter-party or to which the vessels may properly be ordered pursuant to the terms of the Bills of Lading be blockaded, or

"(B) If owing to any war, hostilities, warlike operations, civil war, civil commotions, revolutions, or the operation of international law (a) entry to any such port or discharge of cargo intended for any such port be considered by the Master or Owners in his or their discretion dangerous or prohibited or (b) it be considered by the Master or Owners in his or their discretion dangerous or impossible for the vessel to reach such discharging port—the cargo or such part of it as may be affected shall be discharged at any other safe port in the vicinity of the said port of discharge as may be ordered by the Charterers (provided such other port is not blockaded or that entry thereto or discharge of cargo thereat is not in the Master's or Owner's discretion dangerous or prohibited). If no such orders be received from the Charterers within forty-eight (48) hours after they or their agents have received from the Owners a request for the nomination of a substitute discharging port, the owners shall then be at liberty to discharge the
24 cargo at any safe port which they or the Master may in their or his discretion decide on and such discharge shall be deemed to be due fulfillment of the contract or contracts of affreightment so far as cargo so discharged is concerned. In the event of cargo being discharged at any such other port the Owners shall be entitled to freight as if the discharge had been effected at the port or ports originally designated or to which the vessel may have been ordered pursuant to the terms of the bills of lading. All extra expenses involved in reaching and discharging the cargo at any such other port shall be paid by the Charterers and or Cargo Owners, and the Owners shall have a lien on the cargo for freight and all such expenses.

"3. The vessel shall have liberty to comply with any directions or recommendations as to departure, arrival, routes, ports of call, stoppages, destination, zones, waters, delivery, or in any other wise whatsoever given by the government of the nation under whose flag the vessel sails or any other government or local authority including any de facto government or local authority or by any person or body acting or purporting to act as or with the authority of any such government or authority or by any committee or person having under the terms of the war risks insurance on the vessel the right to give any such directions or recommendations. If by reason of or in compliance with any such directions or recommendations, anything is done or is not done such shall not be deemed a deviation.

"If by reason of or in compliance with any such direction or recommendation the vessel does not proceed to the port or ports

originally designated or to which she may have been ordered pursuant to any safe port which the Master or Owners in his or their discretion may decide on and there discharge the cargo. Such discharge shall be deemed to be due fulfilment of the contract or contracts of affreightment and the Owners shall be entitled to freight as if discharge had been effected at the port or ports originally designated or to which the vessel may have been ordered pursuant to the terms of the Bills of Lading. All extra expenses involved in reaching and discharging the cargo at any such other port shall be paid by the Charterers and/or Cargo Owners, and the Owners shall have a lien on the cargo for freight and all such expenses."

17. This charter-party includes, and all bills of lading issued hereunder shall include the New Jason Clause, reading:

"In the event of accident, danger, damage, or disaster before or after commencement of the voyage, resulting from any cause whatsoever, whether due to negligence or not, for which, or for the consequence of which, the carrier is not responsible, by statute, contract, or otherwise, the goods, shippers, consignees, or owners of the goods shall contribute with the carrier in general average to the payment of any sacrifices, losses or expenses of a general average nature that may be made or incurred, and shall pay salvage and special charges incurred in respect of the goods."

General average, if any, to be according to York Antwerp Rules, 1924, Rule F, 1-15 inclusive and 17-22 inclusive. Owners shall be entitled to appoint General Average adjusters.

18. This charter-party includes, and all bills of lading issued hereunder shall include the Both-to-Blame Collision Clause reading:

"If the ship comes into collision with another ship as a result of the negligence of the other ship and any act, neglect or default of the master, mariner, pilot, or the servants of the carrier in the navigation or in the management of the ship, the owners of the goods carried hereunder will indemnify the carrier against all loss or liability to the other or noncarrying ship or her owners insofar as such loss or liability represents loss of, or damage to, or any claim whatsoever of the owners of said goods, paid or payable by the other or non-carrying ship or her owners to the owners of said goods and set off, recouped or recovered by the other or noncarrying ship or her owners as part of their claim against the carrying ship or carrier."

26 19. All bills of lading issued hereunder shall include the Clause Paramount reading:

CARRIAGE OF GOODS BY SEA ACT OF 1936

"This bill of lading shall have effect subject to the provisions of the Carriage of Goods by Sea Act of the United States, approved April 16, 1936, which shall be deemed to be incorporated herein, and nothing herein contained shall be deemed a surrender by the carrier of any of its rights or immunities or an increase of any of its responsibilities or liabilities under said Act. If any term of this bill of lading be repugnant to said Act to any extent, such term shall be void to that extent, but no further."

20. A regular line bill of lading on booking agents' form to be used and all such bills of lading covering Charterer's cargo to be claused as follows: "All terms and conditions and exceptions of the charter-party dated New York July 10, 1941, are hereby incorporated." This clause will not appear on bills of lading for commercial cargo, but Charterer's Agents to cover the Owner's liability with separate P & I coverage.

21. Charterers to comply with all Government regulations relating to loading, stowage and discharge of dangerous cargo.

22. Charterers shall be responsible for fulfillment of all requirements of Neutrality Act of 1939 of the United States including any amendments thereof and all proclamations, rules, and regulations thereunder so far as they relate to cargo.

23. On-deck cargo to be carried at sole discretion of Master and at the risk of Charterers and or Owners of such cargo.

24. The freight to be paid under this charter is predicated on obtaining war risk insurance at a rate of 5% into the Red Sea on a valuation of $800,000. Any increase in this war risk insurance rate into the Red Sea to be added to the total freight, and reduction to be deducted.

27 25. Charterer has the privilege of securing commercial or other lawful cargo to complete ship, or fill broken storage space, to insurance charterers securing maximum use of ship's capacity. The revenue on such cargo, less cargo handling expenses, P. & I. insurance premiums to cover B. I. risk, deduction for cargo claims, brokerage if any and a commission of 5% to the booking agent (named in clause 8) to be credited to the Charterer.

26. Vessel to be berthed in United States ports at piers or terminals and to use facilities designated by the Charterer and ap-

proved by an authorized representative of the United States Maritime Commission. Consideration will be given to the use of Owner's terminals and facilities where practical.

27. Charterers have privilege of appointing booking or loading agents in the United States approved by the United States Maritime Commission, but Owners not required to pay for this service in excess of one-fourth cent (¼c) per bale cubic as above, subject to a maximum of One Thousand Dollars ($1,000). Charterer's Agents to be used at discharge ports and for which agency fees will be allowed in an amount not exceeding one hundred and twenty-five dollars ($125) for each port.

28. This charter not to become effective until approved by the United States Maritime Commission. If any dispute arises under this charter the same is to be settled by the United States Maritime Commission.

WATERMAN STEAMSHIP CORPORATION,
WATERMAN STEAMSHIP AGENCY, LTD.
As Agents.
JAMES J. MANN, *Vice-President.*
BRITISH MINISTRY OF WAR TRANSPORT,
Representative in the U. S. A.
(Signed) JOHN GAMMIE, *Deputy.*

* * * * *

28 *Exhibit E*

(Copy)

OFFICE FOR EMERGENCY MANAGEMENT DIVISION OF DEFENCE AND REPORTS

WASHINGTON, D. C.

JUNE 9, 1941.

Re: Red Sea Service Requisition No. 1503A

BRITISH MERCHANT SHIPPING MISSION,
Willard Hotel, Washington, D. C.
Attention Mr. R. R. Powell, Secretary.

DEAR MR. POWELL: The following arrangement with respect to payments required to be made by the British Ministry of War Transport under the form of charter party prepared by the Maritime Commission shall be effected:

A. The United States Maritime Commission will make the following payments required to be made to the owners or chartered owners by the British Ministry of War Transport under the terms of the charter:

1. Freight required to be paid under Clause 1 of the charter.

2. Demurrage, if any, required to be paid under Clause 11 of the charter.

3. Any increase in charter hire which may become payable under Clause 24 of the charter.

4. Loading and other expenses payable by the charterer under Clauses 4 and 5 of the charter.

B. The U. S. Maritime Commission shall receive any payments to be made by the owners or chartered owners pursuant to adjustment or reduction of charter hire under the charter which includes:

1. Refunds which may be made under Clause 1 of the charter.

2. Adjustments of freight which may be made under Clause 2 of the charter.

3. Net amounts which may become payable under Clause 25 and reductions in freight resulting from any reduction in insurance rates under Clause 24 of the charter.

The foregoing arrangement will be effective on vessels covered by requisition No. 1503A and on all future vessels which sail from U. S. loading ports to the Red Sea until further notice. It is understood, however, that such arrangement will be the subject of further discussion in connection with any changes which may be made in the near future in the charter arrangement.

Sincerely yours,

(Signed) J. H. BURNS,
Major General, U. S. Army.

Exhibit F

(Copy)

NOVEMBER 26, 1943.

Subject: Notice of Initial Conference under the Renegotiation Act which shall constitute Commencement of Renegotiation

Registered Mail—Return Receipt Requested.

WATERMAN STEAMSHIP AGENCY, LTD.,
Agents for Waterman Steamship Corporation,
19 Rector Street, New York, New York.

GENTLEMEN: Price Adjustment Boards, pursuant to an Act of Congress, sometimes referred to as the "Renegotiation Act," have been established in the War, Navy, and Treasury Departments, the Maritime Commission, the War Shipping Administration, and the Reconstruction Finance Corporation. The function of these Price Adjustment Boards is (1) to review the profits realized from prices in effect under contracts

and subcontracts subject to renegotiation under the Act, and (2) to arrive at a settlement of the amount of excess profits, if any, realized under the Act by the contractor, and, if none, to give him a clearance of liability therefor.

The renegotiation for your company has been assigned to the Commission's Price Adjustment Board.

Notice is given hereby that an initial conference with the Maritime Commission Price Adjustment Board is hereby set for 10:00 A. M., War Time, on December 13, 1943, at the office of the Board, Room 4879, Department of Commerce Building, Washington, D. C. (telephone: Executive 3340, Extension 606).

In the event that the time so fixed is not satisfactory to you, the Board will entertain a request in writing in the form hereto attached, for a continuance of such conference to a date not later than sixty (60) days from the date hereinabove fixed, provided that such request is received at the Board's address above not later than five days preceding the date hereinabove fixed.

It is requested, however, that at such initial conference the Commission's Price Adjustment Board be furnished with the following:

1. A detailed break-down of terminated voyage revenue and expense and other income and expense during the calendar years 1941 and 1942, as between Government and commercial, showing separately the operation under Maritime Commission (British Ministry of War Transport) Charter Parties of the vessels S. S. "West Kysha," "Pan Kraft," "Jean Lafitte," "Ipswich," "Iberville," "Andrew Jackson," "Bienville," "Antinous," "Lafayette," "Beauregard," "Gateway City," and "LaSalle."

31 (a) Government revenue is that received by you as owner or charterer where the voyage was made for the end use of one of the Government agencies above named.

(b) Commercial revenue is that received by you from private charterers where the voyage had no connection with activities carried on by one or more of the Government agencies above named.

2. A detailed breakdown of overhead in said period with a suggested allocation of same as between Government and commercial, showing separately that part which in your opinion should be allocated to the operation under Maritime Commission (British Ministry of War Transport) Charter Parties covering vessels above referred to.

3. An analysis of depreciation.

4. Salaries and all other compensation (including commission, bonuses, royalties, and other forms of extra compensation) of

your officers and employees who received in excess of $10,000 per annum each for the years 1940, 1941, and 1942.

5. Salaries, if any, above stated which were questioned by the Federal income tax authorities.

6. A brief description of any bonus plan, pension trust or other employee compensation plan in effect during the years 1940, 1941, or 1942.

7. An analysis of noncurrent liabilities to holding or subsidiary companies and of floating equipment reserves.

8. Certified or photostatic copy of income and excess profit tax return for the period, with supporting schedules for your company and your subsidiaries or affiliates.

You are at liberty at the initial conference to submit reasons why you cannot furnish the information within the requested period, as well as to state reasons why you are not subject to renegotiation. If you have filed with any other Government agency all or any part of the information, it is requested that you forward to us copies thereof or designate the agency and official to whom it was sent.

32 It is anticipated that after this information has been analyzed by us—no extended period is required for that analysis—a mutually satisfactory determination can be made as to whether you have realized excessive profits, within the meaning of the Act.

Very truly yours,

(Signed) JOHN R. PAULL,
Price Adjustment Board.

Attachment

Form B-A
1

LPI Attachment Application for Continuance of Initial Conference

In the Matter of the Renegotiation of _____, Contractor, _____, 194—.

To: MARITIME COMMISSION,
Price Adjustment Board,
Room 4879, Department of Commerce Building,
Washington 25, D. C.

The undersigned contractor hereby requests a continuance to _____, 194 , at 10:00 A. M., War Time, of its initial conference with the Maritime Commission Price Adjustment Board in the renegotiation with the undersigned contractor which has been commenced pursuant to Section 403 of the Sixth

Supplemental National Defense Appropriation Act 1942, as amended.

_____,

Contractor.

[CORPORATE SEAL] By _____,

A general executive officer of the corporation.

33 *Excerpts from Exhibit G*

III. INTERPRETATIONS OF THE STATUTE

The following interpretations of the statute represent the present opinion of the Departments and the Commission and are subject to such revision from time to time as may appear desirable as a result of the operation of the boards under these interpretations. They are issued for information only and are subject to change without notice. To facilitate the issuance of changes, these interpretations are designated J-PAB-1 to J-PAB-12, inclusive.

J-PAB-1.

1. Contracts and subcontracts subject to renegotiation.—Under subsection (c) of section 403 of the Sixth Supplemental National Defense Appropriation Act, 1942 (Public, No. 528, 77th Cong.), approved April 28, 1942, as amended by section 801 of the Revenue Act of 1942 (Public, No. 753, 77th Cong.), approved October 21, 1942, whenever in the opinion of the Secretary of War, the Secretary of the Navy, the Secretary of the Treasury, or the Chairman of the Maritime Commission (each being hereinafter referred to as the "Secretary"), the profits realized or likely to be realized on any contract or contracts with such Department or Commission (each being hereinafter referred to as the "Department"), or from any subcontract or subcontracts thereunder, whether or not made by the contractor, may be excessive, the Secretary is authorized and directed to require the contractor or subcontractor to renegotiate the prices of such contracts and subcontracts to eliminate any excessive profits thereunder.

The provisions of section 403 relate to all contracts entered into by the War and Navy Departments and the Maritime Commission. Contracts of the Treasury Department subject to renegotiation include:

(1) Contracts placed under section 201 of title II of the First War Powers Act, 1941, 55 Stat. 839 (principally lend-lease contracts, which may be identified by the symbols "DA-TPS" preceding the contract number);

34 (2) Contracts for strategic and critical materials placed under the authority of the Act of June 7, 1939, 53 Stat. 811 (such contracts made after March 1, 1943, may be identified by the symbols "SCM-TPS" preceding the contract number);

(3) Contracts for supplies for refugee relief under the Red Cross program, placed under the authority contained under title III of the Third Supplemental National Defense Appropriation Act, 1942, 55 Stat. 817 (such contracts may be identified by the symbols "TRR" preceding the contract number).

Other types of contracts regularly entered into by the Procurement Division of the Treasury Department in the ordinary course of business prior to the war period, as such, are not subject to renegotiation unless negotiated under authority contained in title II of the First War Powers Act, 1941. However, purchase orders, issued by the War and Navy Departments and the Maritime Commission under General Schedule of Supplies Contracts, which are entered into by the Procurement Division of the Treasury Department on behalf of all departments and establishments of the Government, are considered as being subject to the provisions of section 403. Purchase orders issued by the Treasury Department itself under such contracts are also considered as being subject to the provisions of section 403 if such purchases are for lend-lease or for the Red Cross program.

All so-called lend-lease contracts entered into by the War Department, the Navy Department, the Treasury Department, and the Maritime Commission are subject to the provisions of section 403. However, lend-lease contracts entered into by any other department or agency of the Government are not subject to renegotiation under existing law.

Subsection (c) of section 403 is applicable to all such contracts and subcontracts, whether or not such contracts or subcontracts contain a renegotiation clause, unless (i) final payment
35 pursuant to such contract or subcontract was made prior to April 28, 1942, or (ii) the contract or subcontract provides otherwise pursuant to subsection (b) or (i), or is exempted under subsection (i), of section 403, or (iii) the aggregate sales by the contractor or subcontractor, and by all persons under the control of or controlling or under common control with the contractor or subcontractor, under contracts with the Departments and subcontracts thereunder do not exceed, or in the opinion of the Secretary concerned will not exceed, $100,000 for the fiscal year of such contractor or subcontractor; provided, however, no renegotiation of the contract price pursuant to any provision therefor, or otherwise, shall be commenced more than one year after the close of the fiscal year of the contractor or subcontractor within which completion or termination of the contract or subcontract occurs.

The term "subcontract" as used in subsection (c) is defined to mean any purchase order or agreement to perform all or any part of the work, or to make or furnish any article, required for the performance of another contract or subcontract. The term "article" is defined to include any material, part, assembly, machinery, equipment, or other personal property. This definition of "subcontract" is much broader than under the Vinson-Trammell Act, in that profits on the production and sale of articles required for the performance of another contract or subcontract are subject to renegotiation, as well as profits on the production or sale of all materials incorporated into the end product, down to and including raw materials, except in the case of certain specified raw materials exempted under subsection (i) (1) (ii) of the statute. This definition is interpreted to include contracts with contractors and subcontractors (a) for the sale or processing of an end product or an article incorporated therein, (b) for the sale of machinery or equipment used in the processing of an end product or of an article incorporated in an end product, (c) for the sale of component parts of or subassemblies for such machinery or equipment, and (d) for the performance of personal services required for the performance of the contracts and subcontracts included in (a), (b), and (c).

36 An allocation is made of sales of such machinery and equipment based on the nature of the use thereof (i. e., war or commercial production) and to the extent to which the production of the purchasers to whom such sales are made is subject to renegotiation, such sales are considered renegotiable. Thus if 60% of the sales of the purchasers to whom such machinery and equipment are sold is renegotiable, such sales of machinery and equipment are considered renegotiable to the same extent. In those cases where it is unduly burdensome or impractical to trace the end use of individual items of machinery or equipment, the Departments frequently make this determination on the basis of industry-wide estimates or by some other method mutually agreed upon.

The term "article" has also been interpreted to include commercial products as well as equipment fabricated for particular uses or purposes. The fact that commercial products are sold for industrial uses, either directly or through jobbers or other commercial channels, does not exclude such articles from this definition. The same tests are applied to both ordinary commercial products and equipment fabricated for special uses and purposes.

The fact that all or part of such articles are sold under price ceilings fixed by the Office of Price Administration does not ex-

clude such articles from this definition, or exempt profits made on the sale thereof from renegotiation.

J-PAB-2 (a).

2. Exemptions.—2 (a) Payments before April 28, 1942.—Contracts and subcontracts are not subject to renegotiation under the statute if final payment pursuant to such contract or subcontract was made prior to April 28, 1942. If final payment on a contract or subcontract was not made prior to April 28, 1942, profits made thereunder at any time, even in years prior to 1942, are subject to renegotiation. The Departments have adopted the policy that this provision with respect to payment before April 28, 1942, will be interpreted so that payment will be deemed
37 to have been made although certain relatively small unliquidated items may not have been finally determined and paid for.

This exemption raises the legal question of when a series of transactions constitute one contract or several contracts. If the transactions constitute one contract and final payment had not been made before April 28, 1942, then all the transactions thereunder are subject to renegotiation. If, however, the transactions constitute several contracts, then only those contracts on which final payment had been made before April 28, 1942, are exempt. This question arises frequently in cases involving reorders and orders under option agreements, periodic deliveries under purchase orders, and other similar circumstances. In determining whether an order for further quantities or work constitutes a new and separate contract, the test is whether a new or additional promise is given by the contractor with respect to the additional order, or whether this additional quantity or work is covered by an option, or otherwise, under the initial contract.

J-PAB-2 (b) (i).

2 (b) (i) Fixed exemptions: Contracts with other governmental agencies; Defense Plant Corporation.—Subsection (i) (1) (i) of the statute provides that the statute shall not apply to any contract by a Department with any other department, bureau,

* * * * *

J-PAB-4

4. Statutes of limitation.—The statute provides two statutes of limitation, one on the renegotiation of individual contracts and the other on renegotiation for an expired fiscal year or years.

(a) Renegotiation of individual contracts.—No renegotiation of the contract price pursuant to any provision therefor, or otherwise, shall be commenced by the Secretary more than one year

after the close of the fiscal year of the contractor or subcontractor within which completion or termination of the con-
38 tract or subcontract as determined by the Secretary, occurs. (See subsection (c) (6).) The Departments interpret this provision to mean that renegotiation commences on the specific date set by the Department conducting renegotiation for the initial renegotiation conference unless otherwise agreed by the contractor.

The question has arisen as to whether the term "completion * * * of the contract," as used in this provision, means final delivery, acceptance or payment. The Departments have adopted the view that completion of the contract means final delivery or acceptance under the contract, rather than final payment, and the fact that a contractor may still have certain obligations under guarantees of performance or the fact that there may be unliquidated items outstanding does not extend the time of completion beyond the date of final delivery or acceptance.

(b) Renegotiation for prior years.—Any contractor or subcontractor may file with the Secretaries of the Departments concerned financial statements for any prior fiscal year or years, in such form and detail as the Secretaries shall prescribe by joint regulation. The Secretary of each such Department has one year thereafter within which he may give written notice of renegotiation, in form and manner to be prescribed in such joint regulation, fixing a date and place for an initial conference to be held within 60 days, and unless such notice is given by one of the Secretaries and renegotiation commenced by such Secretary within 60 days, the liability of the contractor or subcontractor for excessive profits realized during such year or years will be discharged. (See subsection (c) (5).)

A joint regulation prescribing the form of the financial statements which the contractor or subcontractor may file was promulgated as of February 1, 1943.

J-PAB-5.

5. Recognition of exclusions and deductions allowed for Federal tax purposes.—Under subsection (c) (3) of the statute, as amended, the Secretary in determining the excessiveness of
39 profits must "recognize the properly applicable exclusions and deductions of the character" which the contractor or subcontractor is allowed under chapter 1 and chapter 2 E of the Internal Revenue Code. Since those items must be properly applicable to the profits from the contracts and subcontracts being renegotiated, they must be allocated between the renegotiable and nonrenegotiable business, even though the full amount is allowed for tax purposes. The words "of the character" disclaim the

implication that the renegotiating authorities are required to compute and allow the actual dollar amount of exclusions and deductions which the Bureau of Internal Revenue would allow.

* * * * *

Exhibit II

520 Investment Building

WASHINGTON, D. C.

December 13, 1943.

Subject: Notice of Initial Conference under the Renegotiation Act which shall constitute Commencement of Renegotiation

Mr. John R. Paull,
Price Adjustment Board,
U. S. Maritime Commission, Washington, D. C.

Dear Mr. Paull: Receipt is acknowledged of your letter of November 26, 1943, addressed to the Waterman Steamship Agency, Ltd., as Agents for Waterman Steamship Corporation, which has been referred to the Corporation for reply. The communication purports to be a notice of an initial conference with the Maritime Commission Price Adjustment Board which has been set for 40 10:00 A. M., War Time, on December 15, 1943, at Room 4879, Department of Commerce Building, Washington, D. C.

In the notice you request certain information for the calendar years 1941 and 1942 with respect to the operation of certain vessels named in the notice, owned by the Waterman Steamship Corporation and its subsidiary, under Charters entered into between the Corporation and the British Ministry of War Transport, and commonly referred to as the Red Sea Charters.

It is respectfully submitted that these Charters are not subject to the provisions of Section 403 of Title IV of the 6th Supplemental National Defense Appropriation Act of 1942, approved April 28, 1942, as amended by the 1942 Revenue Act, for the following reasons:

1. The Charters were not entered into with any "Department" as defined in the Act, but were charters made directly with the British Ministry of War Transport, an Agency of the British Government.

2. Paragraph 6, Section 403 (c) provides that no contract made with a "Department" as defined in the Act, shall be subject to renegotiation where final payment pursuant to such contract was made

prior to April 28, 1942. The final payments of the Charter Hire on each of the vessels listed in the notice were made long prior to that date.

3. Even if it could be shown that the charters were made with a "Department" within the meaning of the law, the Act provides that no renegotiation of any contract shall be commenced more than one year after the close of the fiscal year of the Contractor within which completion or termination of the contract, as determined by the Secretary of the Department, occurs. The Waterman Steamship Corporation completed its obligations under these charters on various dates; the latest of which was January 6, 1942, and the Charters were terminated on those respective dates. The fiscal year of the Waterman Steamship Corporation ends on September 30 of each year. Therefore, more than one fiscal year
41 has intervened since the termination of these Charters, and no renegotiation was commenced within the period prescribed by the Statute. The fact that certain claims for demurrage on some of the vessels are still unpaid, does not extend the time for the commencement of renegotiation, since the Secretary has determined that "the fact that there may be unliquidated items outstanding does not extend the time of completion beyond the date of final delivery or acceptance."

4. The Act specifically provides that any contract by a Department with any foreign government or Agency thereof shall not be subject to renegotiation. The payments to the Waterman Steamship Corporation for the account of the British Ministry of War Transport in connection with these Charters, were made pursuant to an arrangement strictly between the Martime Commission and the British Ministry of War Transport to which the Waterman Steamship Corporation was not a party and concerning which it was not consulted. Since under the law that arrangement is specifically exempted from renegotiation, and since the law does not authorize the Commission to do indirectly what it may not do directly, the charters are clearly outside the provisions of the renegotiation statute.

For the reasons outlined above, the Maritime Commission obviously has no authority to renegotiate the so-called Red Sea Charters under the provisions of the Renegotiation Statute.

The Waterman Steamship Corporation and some of its subsidiaries do have other contracts with various agencies of the Government, some of which may be subject to the provisions of Section 403 of Title IV of the 6th Supplemental National Defense Appropriation Act, as amended. The Corporation would like to reach an agreement with your Board as soon as practicable, as to which of its other contracts may be subject to this Act and what information will be required by your Board with respect to

the same. We could, then, proceed with the preparation
42 of the data and fix a mutually satisfactory time, say within about ninety days, for conferences looking to the renegotiation of such of our other contracts as may be subject to the Act referred to above. However, nothing in this communication, nor the participation in any conference with respect to any other contracts between the Waterman Steamship Corporation and any Department, shall be deemed to include the so-called Red Sea Charters, for the reasons outlined above.

With reference to the general subject to renegotiation of contracts and subcontracts, we assume that such amounts as are repaid to the government will accrue to the credit of the Department with which the contract or subcontract was made, and that the cost of construction or furnishing of materials under the contract would be reduced accordingly. It follows, therefore, that in the case of vessels constructed for the account of the Maritime Commission and sold to private operators, the cost of construction of the new vessel and its sale price would be reduced to the extent that the amounts repaid to the Commission pursuant to renegotiation of contracts or subcontracts are applicable to the cost or sale price of the new vessel.

Very truly yours,

BON GEASLIN,
Assistant Vice President.

BG:GB.

43 *Exhibit 1*

(Copy)

UNITED STATES MARITIME COMMISSION
WASHINGTON, D. C.

MAY 23, 1944.

Subject: Christenson Steamship Company, Waterman Steamship Company

MR. BON GEASLIN,
520 Investment Building,
Washington 5, D. C.

DEAR MR. GEASLIN: After considerable study of the entire Red Sea operation, I am satisfied that there was in each case a contract between the vessel owner and the Maritime Commission to which the Renegotiation Act is applicable. On March 11, 1931 the Congress passed "an Act to promote the defense of the United States" and authorized the President "when he deems it in the

interest of National Defense" to authorize the head of any Department of the Government to procure defense articles. On April 30, 1941 the President wrote the Chairman of the Maritime Commission and directed him "as part of the defense effort to which this county is committed" to secure the service of at least 2,000,000 tons of merchant shipping. Pursuant to this direction, the Commission negotiated with the vessel owners. The vessels were made available, a charter party was signed with the British Ministry of War Transport for technical reasons but the commission agreed to pay the vessel owner the agreed compensation for the use of the vessel. This arrangement was evidenced by correspondence between the Commission and the vessel owner.

> There appears to have been mutuality of understanding among all the parties interested, legality of consideration and definiteness as to terms, time of performance and acceptance. Payment was made in due course as agreed and this payment constitutes a part of the cost of the war to the people of the United States.

I make this statement because at the out-set it was understood that I would explore the legal situation independently of the opinion theretofore rendered by Oscar Cox, Esq. and would not ask the vessel owners to go to the trouble of furnishing any financial data until I was satisfied that there was a renegotiable agreement with the Commission.

In view of the foregoing I suggest a conference at this office, 1200 15th Street, Washington, D. C. at 10:00 A. M. on June 3, 1944 with Christenson Steamship Company and at 10:00 A. M. on June 29 with Waterman Steamship Company for the purpose of determining what portion of the profits of these companies is excessive within the meaning of the Act.

Meanwhile, perhaps you will have some information gotten together for me which may serve to expedite matters and I am enclosing herewith a proposed outline for such information and financial data. I am sure that all this information is readily obtainable from the books of the companies and if it is possible to get it together and send it to me a day or so before the conference, it would be helpful because I should like to make sure that our understanding of the facts is the same.

Very truly yours,

(Signed) KENNETH F. CLARK,
Price Adjustment Board.

Enclosures.

45 STATEMENT IN RENEGOTIATION

STATE OF
County of ss:

I, being duly sworn, depose and say (1) that am an officer to wit—
of , the Contractor signing Exhibits A and B hereto attached;

(2) that I am duly authorized to execute this statement on behalf of said Contractor;

(3) that I am familiar with the income and other financial data of said Contractor and have access to all the books and records of said Contractor;

(4) that I have reviewed and verified the general information, financial data and specific voyage data as to each vessel in the Red Sea operation hereto attached as Exhibit A;

(5) that attached hereto as Exhibit B is a statement of the facts and factors relating to the Contractor's renegotiable business during its fiscal year ended 31, 1941 and 1942 which should be considered in renegotiation;

(6) that attached hereto Exhibit C is a statement with respect to the Contractor's shipping operations in 1941 and 1942 over different trade routes (exclusive of the Red Sea) showing as to each trade route (a) the number of vessels engaged, (b) total DWT months, (c) gross operating revenue, (d) operating cost, (e) overhead, (f) depreciation, and (g) net profit before Federal taxes on income;

(7) that attached hereto are photostatic copies of the Contractor's Returns for Federal taxes measured by income as filed for the fiscal years ended 31, 1941 and 1942 respectively;

(8) that upon information and belief the said information and financial data set forth in Exhibits A, B and C are true and accurate and that to my best knowledge, information and be-
46 lief the Contractor has not omitted to state any material fact required to make the Contractor's representations complete or the omission of which would make such representations misleading.

Subscribed and sworn to before me this day of 1944.

Exhibit A

GENERAL INFORMATION

Contractor
Address
State of incorporation
Date of incorporation, if any
Parent company
Subsidiaries
Affiliated companies
Capital Stock outstanding

Common—number of shares Par Value
Preferred—number of shares Par Value

FINANCIAL DATA

Fiscal Year	1936	1937	1938	1939	Average (1936–1939)	1940	1941	1942
Net worth at beginning of period								
Gross profit on shipping operations							(*)	(*)
Other income								
Costs including:								
Overhead								
Depreciation								
Total								(*)
Net profit before adjustment for Federal taxes on income								
Dividends paid								

*Attach schedule segregating revenue, cost and net profit attributable to contracts with Departments within the scope of the Renegotiation Act of 1942 other than Red Sea voyage revenue and cost

47 Dated 1944

By ----------
President or Treasurer.

RED SEA VOYAGE DATE

(Show each vessel operation separately but on one schedule, if possible)

Vessel
Voyage began
Voyage ended
Number of voyage days
Dead Weight tons
Dead Weight ton months
Bale capacity in cu. ft.
On deck cargo space cu. ft.

*Insurance valuation
Space charter hire
Date paid
Amount
Demurrage
Date paid
Amount
Voyage Revenue
Outward
Intermediate
Inward
Total
Owners Expense—time form charter
Charterers Expense—time form charter
Total Direct voyage expense
**Direct voyage profit
Overhead
Depreciation
Dated 1944

By ----------
President or Treasurer.

48 * In event of loss of vessel show amount of final insurance settlement.

** Indicate in what tax period profits were returned for Federal tax purposes.

* * * * *

In United States District Court

Motion for preliminary injunction

Filed June 28, 1944

Plaintiff, the Waterman Steamship Corporation, a corporation, moves the court for a preliminary injunction in the above entitled cause enjoining the defendants and each of them, individually and in their respective official capacities as set forth in the caption of this cause, and all persons acting, or assuming to act under their direction, pending the final hearing and determination of this cause from

(a) Requiring the plaintiff to furnish the statements, information, and data requested in the letters of the defendants, dated November 26, 1943, and May 23, 1944, or from requiring the plaintiff to commence renegotiation, or renegotiate certain charter agreements entered into between the plaintiff and the British

Ministry of War Transport on the vessels Antinous, Iberville, Bienville, Jean Lafitte, Andrew Jackson, West Kyska, Ipswich, Beauregard, Lafayette, Gateway City, Lasalle and Pan Kraft, on the respective dates of April 25, 1941, May 24, 1941, July 10, 1941, August 16, 1941, September 24, 1941, and April 25, 1941;

(b) Determining, or attempting to determine, in any manner that any of the payments, or any portion thereof, made to the plaintiff under the terms of said charter agreements represent excessive profits, such terms defined in the Act of Congress, approved April 28, 1942, and known as the Renegotiation Act;

(c) Refixing, or attempting to refix, contract prices or charter hire of each of said charter agreements;

49 (d) Withholding, or instructing, or requesting the United States or any instrumentality, agency, officer, or agent of the United States to withhold any monies due, or to become due, to plaintiff from the United States, or any agency or instrumentality thereof, under contracts with the United States or any agency or instrumentality thereof;

(e) Further proceeding in any manner whatsoever to enforce the provisions of the Act of Congress, approved April 28, 1942, known as the Renegotiation Act, against the plaintiff with respect to the aforesaid charter agreements entered into by it with the British Ministry of War Transport;

The grounds in support of this motion are as follows:

(1) Unless restrained, the defendants will immediately make a determination that a portion of the payments made to the plaintiff under the terms of the charter agreements referred to above represent excessive profits as such term is defined in the Act of Congress, approved April 28, 1942, and known as the Renegotiation Act and will refix the contract price of charter hire of each of said charter agreements and will either file suit against plaintiff to recover such sums so determined as a result of the refixing of the contract price, or charter hire, or will withhold monies due or to become due to plaintiff from the United States, or will instruct or request the United States or any of its agencies to withhold monies due or to become due to plaintiff from the United States under contracts with the United States, or will cause criminal action to be instituted against plaintiff, or its officers and employees for failure to furnish statements, information, and data, requested in letters of the defendants, dated November 26, 1943, and May 23, 1944;

(2) The aforesaid threatened acts by the defendants are illegal, beyond the scope of their authority, and not authorized by the Act of April 28, 1942, known as the Renegotiation Act, under which they are purportedly acting and unless restrained the acts

of the defendants so threatened will constitute a violation
50 of the rights of the plaintiff under the Fifth Amendment of the Constitution of the United States;

(3) Immediate and irreparable injury, loss and damage will result to plaintiff by reason of the aforesaid threatened actions by defendants as more particularly set forth in the verified complaint filed herein;

(4) If the defendants carry into effect the actions so threatened, any judgment which this court may later render on final determination of this cause will be ineffective;

(5) If this preliminary injunction be granted, the injury, if any, to the defendants herein if final judgment be in their favor, will be inconsiderable and will be adequately indemnified by bond.

BON GLASLIN,
ALLEN J. KROUSE,
Attorneys for Plaintiff.
520 Investment Building, Washington, D. C.

Notice of motion

Please take notice that the above Motion for Preliminary Injunction is set for hearing in the Motions Court on the 13th day of July, 1944, at 10 o'clock A. M. or as soon thereafter as counsel can be heard.

BON GLASLIN,
ALLEN J. KROUSE,
Attorneys for Plaintiff.

* * * * * *

In United States District Court

Motion to dismiss the petition

Filed July 10, 1944

Now come the defendants herein, by their attorneys, and move the Court to dismiss the complaint herein on the grounds that:

1. The Court lacks jurisdiction over the subject matter of the action.

51 2. The complaint fails to state a claim against the respondent upon which relief can be granted, in that (a) it fails to show any injury to petitioner, irreparable or otherwise; (b) it fails to show that plaintiff has exhausted its administrative

remedies, and indeed, shows affirmatively that plaintiff has not exhausted its administrative remedies.

FRANCIS M. SHEA,
Assistant Attorney General,
EDWARD M. CURRAN,
United States Attorney,
Attorneys for Defendants.

* * * * *

In United States District Court

Memorandum

Filed Aug. 15, 1944

While it is not clear upon what provision or provisions of law the defendants purport to act re plaintiff's claimed peculiar contractual relationship, they have the authority to renegotiate such contracts as come within the purview of the law in question.

The plaintiff counters with the argument that the contracts in question are outside the renegotiation law. This, it seems, brings the matter squarely within the rule laid down in the Myers case (Myers v. Bethlehem Shipbuilding Corp., 303 U. S. 41–50–51). Skinner & Eddy Corp. v. U. S. 249 U. S. 557 is distinguished in fact and principle. There is no order here void ab initio, or any order at all.

Motion for preliminary injunction Denied. Motion of defendants to dismiss—Granted.

Counsel will prepare order in consonance with this memorandum opinion.

MATTHEW F. McGUIRE,
Associate Justice.

8/15/44.

* * * * *

52 In United States District Court

Order

Filed Aug. 16, 1944

This cause having regularly come on to be heard before the above-named court on August 7, 1944, upon the motion of plaintiff for a temporary injunction and upon the motion of defendants for dismissal of the action, and counsel for the parties having been heard and briefs filed and considered;

Now, upon said motions and the complaint filed herein the court being of the opinion and having determined, as stated in its memorandum filed herein on August 15, 1944, that this action may not be maintained, it is

Ordered that the plaintiff's motion for temporary injunction be, and it hereby is, denied; and it is further

Ordered that the complaint be, and it hereby is, dismissed.

Dated: August 16, 1944.

MATTHEW F. MCGUIRE,
Associate Justice.

Approved as to form:

ALLEN J. KROUSE,
Attorney for Plaintiff.

53 In the United States Court of Appeals, District of Columbia

April Term 1944

No. 8862

WATERMAN STEAMSHIP CORPORATION, APPELLANT

vs.

EMORY S. LAND, INDIVIDUALLY AND AS CHAIRMAN OF THE UNITED STATES MARITIME COMMISSION, ET AL., APPELLEES

Motion for leave to substitute party appellee and to add parties appellees

Filed Feb. 14, 1945

Comes now the appellant in the above-entitled cause and represents to this Honorable Court

(1) That this action is against Emory S. Land, individually and as Chairman of the United States Maritime Commission, Thomas M. Woodward, A. G. Rydstrom, John R. Paull, and Carman G. Blough, individually and as the Chairman and members of the Price Adjustment Board of the Maritime Commission respectively;

(2) That the decision and order of the Court below was entered August 16, 1944, and notice of appeal from such order was filed by appellant on August 18, 1944;

(3) That subsequent thereto the appellee Carman G. Blough became separated from and is no longer a member of the Price Adjustment Board of the Maritime Commission; that Norman L. Burton has been designated as the successor to the said Carman G. Blough as a member of such Board and has entered upon his duties as such;

(4) That on or about August 22, 1944, the following persons were designated and entered upon their duties as members of the Price Adjustment Board of the Maritime Commission, namely, Kenneth F. Clark, Victor B. Gerard, and W. B. Van Houten; that on or about the 23rd day of October 1944,
54 E. Stanley Glines was designated and entered upon his duties as a member of said Board;

(5) That the duties of the above-named persons as members of the Maritime Commission Price Adjustment Board are the same as those alleged in the complaint of record herein, to be the duties of the members of said Board and as specified in Administrative Order No. 64 of the United States Maritime Commission which is marked Exhibit A and attached to and made a part of said Complaint (see Joint Appendix pages 15–18);

(6) That the said Norman L. Burton, Kenneth F. Clark, Victor B. Gerard, W. B. Van Houten, and E. Stanley Glines purportedly acting in their official capacities as members of said Maritime Commission Price Adjustment Board have adopted the arbitrary and unlawful assumption of authority and jurisdiction heretofore asserted by the appellees herein, to exist under the provisions of the Renegotiation Act with respect to the charter agreements entered into by the appellant with the British Ministry of War Transport and have adopted, and intend to and will, unless the relief sought herein is granted, carry out in the manner and by the means alleged in the Complaint, the arbitrary and unlawful determinations made by the appellees that said charters in each case constituted a contract between the appellant and the United States Maritime Commission, to which the Renegotiation Act is applicable, and that excessive profits were realized therefrom; that said persons purportedly acting in their official capacities intend to and will, unless the relief sought in the complaint is granted, arbitrarily and without authority of law enforce against the appellant the provisions of the Renegotiation Act with respect to said charter agreements in the manner and by the means alleged in the complaint;

(7) The allegations contained in the complaint with respect to the arbitrary and unlawful assumption of such authority, purportedly under the provisions of the Renegotiation Act, and the threats of appellees to enforce their unlawful determinations as aforesaid apply with equal force and effect to the said Norman L. Burton, Kenneth F. Clark, Victor B. Gerard, W. B. Van
55 Houten, and E. Stanley Glines who have been designated and entered upon their duties as members of said Price Adjustment Board of the Maritime Commission since the order and judgment of the Court below in this proceeding, and since the

filing of the Notice of Appeal herein, and who are purportedly acting in their respective official capacities as members of such Board with respect to the matters and things complained of in this action.

(8) That said persons individually and in their official capacities as members of the Price Adjustment Board of the Maritime Commission are proper and necessary parties to this proceeding and unless the relief sought in the complaint shall be granted as against such persons individually and as members of said Board, appellant will suffer immediate and irreparable injury as alleged in the complaint against which there does not exist any plain, speedy or adequate remedy at law.

Wherefore, the premises considered, the appellant moves the Court, pursuant to Rule 25 (d) of the Federal Rules of Civil Procedure, and Rule 28 (b) of the rules of this Court:

(1) For leave to substitute the said Norman L. Burton, individually and as the successor in office to the said Carman G. Blough as a party appellee herein;

(2) That pursuant to Rule 21 of the Federal Rules of Civil Procedure and Rule 25 (b) of the Rules of this Court to add as parties appellee herein the said Norman L. Burton, Kenneth F. Clark, Victor B. Gerard, W. B. Van Houten, and E. Stanley Glines, individually and as members of the Maritime Commission Price Adjustment Board;

(3) That the Court issue such order or orders as may be necessary in the premises.

Bon Geaslin,
Bon Geaslin,
Allen J. Krouse,
Allen J. Krouse,
520 Investment Building, Washington, D. C.,
Attorneys for Appellant.

This is to certify that I have this 14th day of February 1945, sent by registered mail copies of the above Motion to each of
56 the following persons at the addresses given opposite their names:

Norman L. Burton, War Production Board, Room 4554, Social Security Building, Washington, D. C.

Kenneth F. Clark, Price Adjustment Board, United States Maritime Commission, Room 512, 1200–15th St. NW., Washington, D. C.

E. Stanley Glines, Price Adjustment Board, United States Maritime Commission, Room 512, 1200–15th St. NW., Washington, D. C.

Victor B. Gerard, Price Adjustment Board, United States Maritime Commission, Room 512, 1200–15th St. NW., Washington, D. C.

Lt. Com. W. B. Van Houten, Price Adjustment Board, United States Maritime Commission, Room 512, 1200–15th St. NW., Washington, D. C.

Francis M. Shea, Assistant Attorney General, Department of Justice, Washington, D. C.

Edward M. Curran, United States Attorney, Court House, D Street between 4th and 5th Streets NW., Washington, D. C.

Bon Geaslin.

BON GEASLIN.

In United States Court of Appeals for the District of Columbia

[Title omitted.]

Order

Filed March 15, 1945

On consideration of appellant's motion for leave to substitute Norman L. Burton, individually and as the successor in
57 office to Carmen G. Blough, as a party appellee herein, and to add as parties appellee herein the said Norman L. Burton, Kenneth F. Clark, Victor B. Gerard, W. B. Van Houten, and E. Stanley Glines, individually and as members of the Maritime Commission Price Adjustment Board, It is

Ordered by the Court that the said motion be, and it is hereby, granted.

PER CURIAM.

Dated March 15, 1945.

[File endorsement omitted.]

58 United States Court of Appeals, District of Columbia

No. 8862

WATERMAN STEAMSHIP CORPORATION, APPELLANT

v.

EMORY S. LAND, INDIVIDUALLY AND AS CHAIRMAN OF THE UNITED STATES MARITIME COMMISSION, ET AL., APPELLEES

Appeal from the District Court of the United States for the District of Columbia; Matthew F. McGuire, Associate Justice

Argued March 20, 1945.—Decided June 18, 1945

Mr. Bon Geaslin, with whom Mr. Allen J. Krouse was on the brief, for appellant.

Mr. Walker Lowry, Attorney, Department of Justice, of the Bar of the Supreme Court of California, pro hac vice, by special leave of court, with whom Assistant Attorney General Francis M. Shea and Messrs. Edward M. Curran, United States Attorney, Arnold Levy, Special Assistant to the Attorney General, and A. Morris Kobrick, Attorney, Department of Justice, were on the brief, for appellees.

Before GRONER, C. J., and MILLER and ARNOLD, JJ.

Opinion

GRONER, C. J.: This is an appeal by Waterman Steamship Corporation, plaintiff below, from a final judgment entered by the District Court dismissing Waterman's complaint for an injunction and declaratory judgment. Waterman is the owner and operator of a large fleet of ocean-going steam vessels, and on April 25, 1941, and on several dates subsequent thereto, chartered to British Ministry of War Transport, an agency of the British Government, certain of its vessels for the transportation of war goods from two United States Atlantic Coast ports to two ports of discharge in the Gulf of Aden and the Red Sea. The charter parties covering the several vessels were approved by the Maritime Commission in accordance with § 808 of the Shipping Act of 1916,[1] and were in all respects performed by Waterman, and the charter hire, except in respect to several small items of demurrage, paid to appellant on or before November 28, 1941.[2]

59 In November 1943, appellees, constituting the Price Adjustment Board of the Maritime Commission (hereinafter called "Commission"), purporting to act pursuant to the provisions of the Renegotiation Act,[3] served notice upon Waterman to appear before it on December 13, 1943, for the commencement

[1] Title 46 U. S. C., § 808: "Except as provided in section 1241 of this title, it shall be unlawful, without the approval of the United States Maritime Commission, to sell, mortgage, lease, charter, deliver, or in any manner transfer, or agree to sell, mortgage, lease, charter, deliver, or in any manner transfer, to any person not a citizen of the United States, * * * any vessel or any interest therein owned in whole or in part by a citizen of the United States and documented under the laws of the United States, * * *."

[2] The Act, *infra* note 3, exempts from renegotiation all contracts for which payment was completed prior to April 28, 1942.

[3] U. S. C. Title 50, App. § 1911 [§ 403 of the 6th Supplemental National Defense Appropriation Act, 1942] provides that: "Whenever, in the opinion of the Secretary of a Department," excessive profits are realized "from a contract with such Department," the Secretary may require the contractor "to renegotiate the contract price." The 1943 Act adds to the above a provision authorizing review of the "amount" by the Tax Court and provides that the finding of the Tax Court as to the *amount* of excessive profits shall be final.

of renegotiation of the characters in question to determine whether Waterman had realized excessive profits.[4]

Waterman, pointing out that the charters were to a foreign government, denied that the Commission had any jurisdiction or authority in relation thereto, and declined to consent to renegotiation. The Commission, however, adhered to its position and insisted that the contracts should be construed to be between "*the vessel owner and the Maritime Commission*," [italics supplied] and hence that the Renegotiation Act was applicable.[5] Waterman, as a result of the impasse, brought this suit June 28, 1944, charging that there exists an actual and immediate controversy between the parties and that accordingly suit is brought for the purpose of enjoining enforcement of the Renegotiation Act as to Waterman's British contracts, and for a judgment declaring that the contracts are not subject to its provisions.

60

The Commission, without answering, moved to dismiss and the District Court granted the motion on the ground that Myers v. Bethlehem S. Corp., 303 U. S. 41, is controlling, i. e., that Waterman had not exhausted its administrative remedies.

On this appeal Waterman argues first, that the charters with the British Ministry were not charters with the Commission, or any "Department" of the United States Government, within the meaning of the Act, and accordingly that there is no law or statute which requires or authorizes their renegotiation; second, that final payment was made prior to April 28, 1942, and the charters are accordingly specifically exempted from the provi-

[4] The notice to Waterman, fixing the day of the commencement of renegotiation, was captioned as follows:

"Registered Mail—Return Receipt Requested.

Subject: Notice of Initial Conference under the Renegotiation Act which shall constitute Commencement of Renegotiation."

The language of this notice was in the precise language of the Renegotiation Act of 1943 (§ 403 (c) (2) (A)), which reads: "The mailing of such notice by registered mail to the contractor or subcontractor shall constitute the commencement of the renegotiation proceeding." The body of the notice contained, *inter alia*, the information that "The renegotiation for your company has been assigned to the Commission's Price Adjustment Board," and the time fixed at 10:00 A. M. December 13, 1943, and requested a "detailed breakdown" of voyage revenue, expenses and other income received or expended in re the voyages of the vessels chartered to the British Ministry of War Transport, to the end that the Price Adjustment Board might determine "as to whether you have realized excessive profits, within the meaning of the Act."

[5] The position of the Commission, taken in response to Waterman's written protest that its charter contracts were not renegotiable, was contained in a reply signed by the Commission's General Counsel for "*Price Adjustment Board*," in which it was said:

"After considerable study of the entire Red Sea Operation, I am satisfied that there was in each case a contract between the vessel owner and the Maritime Commission to which the Renegotiation Act is applicable."

The letter concluded with a statement of the reasons for the opinion and called on Waterman to carry out the Commission's order to submit data to the end that renegotiation might be considered and completed.

The Maritime Commission's Administrative Order No. 64 (issued May 5, 1942) set up the Price Adjustment Board, and charged it with responsibility to bring about review of a contract as it might deem to be desirable, to renegotiate, or cause to be renegotiated, such contract prices when in its judgment such action might be necessary or desirable. The Administrative Order also authorized the Board to delegate to any one or more of its members the power to initiate investigations, request information and assistance on behalf of the Board and to represent the Board in negotiations with contractors.

sions of the Act; and third, that the charters were completed and terminated in a fiscal year which expired more than one year prior to the date on which appellees purported to commence renegotiation, and hence are excluded from renegotiation by the express provisions of the Act.

If the correctness of the judgment below depended upon answers to Waterman's points two and three, it might perhaps be affirmed, for the questions of the time of payment and completion of contracts may very well be matters as to which Congress has committed the answer primarily to the Commission.* But, in the view we take of the first point, we are of opinion that the District Court was wrong in holding against Waterman's legal right to a declaratory judgment on the jurisdictional question. For obviously, if there is no law compelling renegotiation of the contracts here in dispute, and if there is a real and substantial controversy, the question, as the Commission admits, in the present state of the pleadings, is jurisdictional and fundamental and Waterman is clearly entitled to invoke the Declaratory Judgment Act,† to the end that the controversy in that regard be settled promptly and without the loss and expense and delay which otherwise is inevitable.

Section 403 (c)‡ of the Renegotiation Act, on which the Commission relies, authorizes renegotiation of contracts made with "Departments" of the Government of the United States and provides that notice by registered mail to the contractor or subcontractor, shall constitute the commencement of the renegotiation proceeding. The word "Department" (as to whose contracts, alone, the Commission has jurisdiction) is defined as including "War Department, Navy Department, Treasury Department, Maritime Commission, War Shipping Administration, Defense Plant Corporation, Metals Reserve Company, Defense Supplies Corporation, and Rubber Reserve Company, respectively." There is not, and of course there cannot be, any claim that the Commission is authorized to reexamine or renegotiate a contract of a foreign government. And if it is a fact, as the complaint alleges—and as the motion to dismiss

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* With respect to Waterman's third argument, for example, the Act clearly requires an administrative determination in the first instance. Section 403 (c) (6) of the 1942 Act provides:

"No renegotiation of the contract price pursuant to any provision thereof, or otherwise, shall be commenced by the Secretary more than one year after the close of the fiscal year of the contractor or subcontractor within which completion or termination of the contract or subcontract, *as determined by the Secretary, occurs*." [Italics supplied.] 50 U. S. C. Appendix 1191 (c) (6).

† 28 U. S. C., § 400. "Declaratory judgments authorized. * * * (1) In cases of actual controversy except with respect to Federal taxes the courts of the United States shall have power upon petition, declaration, complaint, or other appropriate pleadings to declare rights and other legal relations of any interested party petitioning for such declaration, whether or not further relief is or could be prayed, and such declaration shall have the force and effect of a final judgment or decree and be reviewable as such. * * *"

admits—that the contracts (charter parties) in issue were contracts with the British Government, it follows, of course, that the Commission, in undertaking to investigate profits, is exceeding its statutory powers.

Here, as we have seen, the complaint charges that Waterman, the owner of certain steamships, entered into the charter agreements with the British Ministry of War Transport, an agency of the British Government. And an inspection of a copy of a typical charter party—filed as an exhibit with the complaint—confirms this allegation, for it shows in express terms that it is an agreement "between Waterman Steamship Corporation Owners" and the "British Ministry of War Transport Charterers." And the only thing in the complaint which in any degree connects a Department of the United States Government in any way with the transaction is the statement in allegation 13, as follows:

"The plaintiff is informed and believes and therefore avers that the United States or a department or agency thereof entered into an arrangement, agreement or contract with the British Government or an agency thereof with respect to payments required to be made to the plaintiff by the British Ministry of War Transport, under the form of charter agreements entered into by the plaintiff with the British Ministry of War Transport. The details of said arrangement, agreement or contract are unknown to plaintiff, except as the same are set forth in a letter from the Office for Emergency Management, an agency of the United States, to the British Merchant Shipping Mission, dated the 9th day of June 1941, a copy of which letter is attached hereto and made a part of this complaint as though fully set forth herein, and marked Exhibit 'E'. The plaintiff was not a party to, nor was it consulted with respect to the arrangement, agreement or contract aforesaid, and took no part in the discussions or negotiations which led to its consummation."

Exhibit E, referred to, is a letter from the United States Office for Emergency Management to the British Merchant Shipping Mission, as follows:

"The following arrangement with respect to payments required to be made by the British Ministry of War Transport under the form of charter party prepared by the Maritime Commission shall be effected:

"A. The United States Maritime Commission will make the following payments required to be made to the owners or chartered owners by the British Ministry of War Transport under the terms of the charter:

62 1. Freight required to be paid under Clause 1 of the charter.

2. Demurrage, if any, required to be paid under Clause 11 of the charter.

3. Any increase in charter hire which may become payable under Clause 24 of the charter.

4. Loading and other expenses payable by the charterer under Clauses 4 and 5 of the charter.

B. The U. S. Maritime Commission shall receive any payments to be made by the owners or chartered owners pursuant to adjustment or reduction of charter hire under the charter which includes:

1. Refunds which may be made under Clause 4 of the charter.

2. Adjustments of freight which may be made under Clause 2 of the charter.

3. Net amounts which may become payable under Clause 25 and reductions in freight resulting from any reduction in insurance rates under Clause 24 of the charter.

The foregoing arrangement will be effective on vessels covered by requisition No. 1503A and on all future vessels which sail from U. S. loading ports to the Red Sea until further notice. It is understood, however, that such arrangement will be the subject of further discussion in connection with any changes which may be made in the near future in the charter arrangement.

"Sincerely yours,

(Signed) J. H. Burns,
Major General, U. S. Army."

Giving effect to all that is contained in this correspondence between a bureau of the United States and the British Shipping Mission, it shows no more than an understanding *between the two governments* that the United States would defray the expenses of the delivery from this country to ports on the Red Sea of war supplies to the British. And we may, perhaps, assume that the arrangement was under "Lend-Lease." Perhaps we may also assume that there were obstacles of an international nature which required the adoption of the method followed by the two governments, since at the time of the delivery the United States were not at war with Germany or Italy. But however that may be, it seems perfectly obvious that such an intergovernmental arrangement could have no effect upon Waterman's legal rights in the charters, and this is especially true in the light of the allegation of the complaint that as to the arrangement Waterman was not consulted and took no part in its consummation. The charter parties were, as we have seen, only between Waterman and the British Ministry, and all of the conditions for the benefit of the charterers were benefits running exclusively to the Ministry. It

alone, by the terms of the charters, was authorized to change the named ports of discharge, to make adjustments in charter hire and to receive funds where, under the provisions of the charters, such were payable. The Ministry had the right to cancel the charter party if there were failure in certain aspects of the agreement, and it alone, by the terms of the charters, was responsible for payment of demurrage. If, as claimed by the Commission, the charters were actually agreements between the United
63 States and Waterman, the provisions of the Shipping Act would not have required approval by the Maritime Commission, as it would have of contracts with an alien, and likewise the charter parties, to be legal, must have contained a provision to the effect that no member of or delegate to Congress would share in the profits,[8] and in addition the charters must have contained a provision against discrimination on account of race, color or national origin.[9] So that, at most, we have a case involving a written contract between an American corporation on the one hand and the British Government on the other, in which, for reasons of its own, the United States had assumed, as between itself and the British Government, to act as primary paymaster. Certainly there is nothing in this circumstance, without more, which would set at naught the well established legal principle that those who are parties to and bound by the contract are those who are shown by its terms to have contracted. They alone are bound by its provisions in the absence of a controlling statute.

Counsel for Waterman appropriately cite the case of United States v. Algoma Lbr. Co., 305 U. S. 415, as conclusive of this legal principle. There, in very definitely similar circumstances, the Supreme Court held that the United States, notwithstanding an interest in the subject matter of a contract, could not on that ground be subsituted in the place and stead of one of the parties to the contract and be required to assume that party's obligations. As to this the Court said:

"Neither the United States nor any officer purporting to act on its behalf is named a party to the contract. By its terms the contract is declared to be entered into 'between the Superintendent of the Klamath Indian School, for and on behalf of the Klamath Indians, party of the first part' and the Lumber Company, 'party of the second part.' It is thus upon its face the contract of the Klamath Indians executed by the Superintendent, acting as their agent. * * *

"Respondents point only to Sec. 7 of the Act of 1910 and the Regulations prescribed under it as compelling a different result.

[8] 41 U. S. C., 122.
[9] 6 Fed. Reg. 3109 (1941).

They argue that the requirements that the matter of sale be prescribed by the Secretary, that the contracts be executed by the Superintendent and approved by the Secretary, and that the prices of lumber be fixed by the Indian Commissioner, indicate a purpose to make the United States, acting as guardian or trustee of the Indians through the Secretary and Superintendent, the contracting party. But, as we have said, all that was done by the government officials in supervising the execution of the contracts and their performance was consistent with the exercise of its function as protector of the Indians without the assumption by the United States of any obligation to the purchasers of the timber, and no implied obligation on its part arises from the performance of that function."

Here, as we have pointed out, we have a simple contract of carriage by water, entered into by two responsible parties, each in its own behalf, and nothing more—except that the United States as the result of private arrangement with one of the parties, agreed to, and presumably did, pay the freight.

64 In this view enough has been said, we think, to indicate that in our opinion the complaint states a cause of action on which the District Court is empowered to enter a declaratory judgment. There is nothing in the Renegotiation Act which forbids it,[9] and it is difficult to see how the exercise of the right would improperly interfere with the statutory administrative plan. On the contrary, it would settle the jurisdictional question in the only forum in which it can be settled—at least at this stage of the case. If decided favorably to Waterman, it would completely end the controversy. If decided adversely to Waterman, it would leave the Commission and, if need be, the Tax Court, free to consider the merits. They alone are given jurisdiction to determine "what portion of the profits are excessive" within the meaning of the Act.

Certainly the power of a federal court, in a case of actual controversy involving no question of administrative discretion, to enter judgment declaratory of the rights of the parties is fundamental where no exclusive remedy is provided by statute—and likewise, even where a remedy of some sort is afforded, if it is not an adequate substitute and does not provide relief.[10] And that is

[9] "These remedies [habeas corpus, certiorari, mandamus, prohibition, and declaratory judgment] * * * are not limited to the cases in which the Constitution is deemed to require judicial review. On the contrary, even in cases in which Congress is competent to exclude judicial participation, these remedies are available on determination (1) that Congress has not forbidden judicial review, (2) that review would not improperly interfere with administration, and (3) that the issues presented are within the 'judicial power' to decide." Final Report, Attorney General's Committee on Administrative Procedure (1941) 81.

[10] That we have here a "controversy" is beyond any question (see footnotes 4 and 5). That it is subject to judicial decision is also clear, as is also that it is definite and concrete and is between parties having adverse legal interests. It is real and it is substantial. In like circumstances the Supreme Court has said the judicial function may be appropriately exercised, although the determination may not require the award of process or the payment of damages. Aetna Ins. Co. v. Haworth, 300 U. S. 227, 241.

certainly true in this case, for here, as the result of the District Court's disclaimer of jurisdiction, Waterman would be subjected to an expensive inquisitorial investigation. This might be followed by the sequestration of moneys due it by the United States on other contracts; and if these are insufficient in amount, it might then be confronted with an order, based on an ex parte determination, requiring it to repay a large sum of money—all in advance of a decision on the primary question, whether it is liable at all. To grant such a proposition would be contrary to the principles of expeditious justice.

We recognize the wrong of undue delay in judicial review in our opinion in Perkins v. Elg, 69 App. D. C. 175, 99 F. 2d 408. The question there was whether a citizen born in the United States who had been taken by her parents as a child to their former home in Sweden, where she remained until after she was twenty-one years of age, was entitled at that time, on her election, to retain American citizenship and to return to the United States as an American citizen. The State Department first answered the question in the affirmative and allowed her to return, but later concluded that the ruling was wrong, threatened her deportation and refused her an American passport, on the ground that because of her return with her father, a naturalized citizen of the United States, to Sweden, his former home, with the intention of not returning, she too had lost her American citizenship and had acquired Swedish nationality. She brought suit against the Secretary of State, Secretary of Labor and the Commissioner of Immigration for judgment declaring that she was a citizen of the United States, and for an injunction against the Secretary of Labor to prevent his carrying out his threat to deport her from the United States. We held that the District Court had jurisdiction to make the declaratory judgment and to enjoin the carrying out of the threat. We said:

"We think the facts we have outlined present a case fairly within the intent and purpose of the act whereby appellee may test the validity of the threat and have, as she is entitled to have, a declaratory judgment of her American citizenship. For we certainly have a case 'admitting of an immediate and definite determination of the legal rights of the parties in an adversary proceeding upon the facts alleged,' and in these circumstances the Supreme Court has said the judicial function may be appropriately exercised although the adjudication of the rights of the litigants may not require the award of process or the payment of damages. Aetna Life Ins. Co. v. Haworth, 300 U. S. 227, 57 S. Ct. 461, 81 L. Ed. 617. * * * "[12]

[12] Cf. Ng Fung Ho v. White, 259 U. S. 276.

On appeal to the Supreme Court our opinion was affirmed, 307 U. S. 325. Here, as there, we have a dispute fundamental as to its nature, admitting of an immediate and definitive determination of the rights of the parties. To hold in such a case that the Declaratory Judgment statute is not available would be to destroy the purpose for which it was adopted. Indeed, if it were necessary, as it is not, we might go further and hold in the present state of facts that the District Court had jurisdiction without regard to the Declaratory Judgment Act to exercise its equity power to decide the question on which this case turns. See Shields v. Idaho Central Ry., 305 U. S. 177, Utah Fuel Co. v. Commissioner, 306 U. S. 56, and Great Northern Rwy. v. Merchants Elev. Co., 259 U. S. 285, 290. And the cases on which the Commission relies,[14] and

66 in which a review in equity was denied, were based upon the fact that there were adequate statutory remedies otherwise available. Here there is none, for the Renegotiation Act affords no opportunity, either before the Commission or the Tax Court or elsewhere, for an adequate determination of the jurisdictional question. And in such case Professor Borchard says, "it is a matter for judicial determination."[15] And to this he adds that "where administrative authority over a particular transaction or business is in dispute, and, the facts being established, the issue of jurisdiction is purely one of law, there is no reason why the courts cannot make a declaration, although in some of these cases an injunction would be refused."[16]

Accordingly, we refrain from concluding that a temporary injunction issue,[16] though the status quo may, in the discretion of the District Court, be maintained pending decision of the jurisdictional question. In such case, the District Court may, as a condition thereof, require appellant to execute and file an in-

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[14] Particular emphasis is placed upon the following four cases, which we think are distinguishable:

(1) California v. Latimer, 305 U. S. 255 (1938), held that an original bill in equity would not lie where the administrative tribunal's orders could only be enforced at law, at which time petitioner might then present its jurisdictional defenses.

(2) Federal Power Commission v. Edison Co., 304 U. S. 375 (1938), held that "mere preliminary or procedural orders are not within the statutes providing for *review by the Circuit Court of Appeals*." (Italics supplied.)

(3) Petroleum Exploration, Inc. v. Public Service Commission, 304 U. S. 209 (1938), held that the mere cost of preparing for a hearing is not sufficient cause to justify the interference by a *federal* court with a *state* administrative body cited.

(4) Myers v. Bethlehem Shipbuilding Corp., 303 U. S. 41 (1938), held that the statute had vested *exclusive* jurisdiction in the Circuit Court of Appeals to set aside, upon petition by an aggrieved party, any final order of the administrative body, and that the administrative remedies before the Board and the Court must first be exhausted before recourse could be had to a court of general equity jurisdiction.

Miles Laboratories v. Fed. Trade Comm., 78 U. S. App. D. C. 326, 140 F. 2d 883, is also cited by appellees. But there we dealt with a jurisdictional attack on an administrative body, from whose orders there existed an exclusive statutory right of appeal.

[15] Borchard, Declaratory Judgments (2d Ed. 1941) 878.

[16] *Ibid.*

[16] *Cf.* Interstate Natural Gas Co. v. La. Pub. Service Comm., 22 F. Supp. 50 (E. D. La. 1940) (preliminary injunction denied); 31 F. Supp. 980 (declaratory judgment granted); Black v. Little, 8 F. Supp. 867 (E. D. Mich. 1934). And see N. Y. Porto Rico S. S. Co. v. U. S., 32 F. Supp. 538, 116 F. 2d 709, revd. 36 F. Supp. 190.

demnity bond, with proper sureties, in such sum as will insure payment to the United States of any amount ultimately found to be due the United States, growing out of the contract or contracts involved in this litigation.

We therefore remand the case to the District Court for consideration of the single question: Were the charter agreements, entered into in 1941 by Waterman Steamship Corporation and the British Ministry of War Transport, contracts with a "Department" within the meaning of § 403 of the Renegotiation Act of 1942?

Reversed and remanded for proceedings in accordance with this opinion.

Dissenting opinion

ARNOLD, Associate Justice, dissenting: The majority opinion is in direct conflict with the well settled principle which this court affirmed in the case of Helco Products Co. v. McNutt,[1] as follows:

"The Supreme Court has said the pronouncements, policies, and programs of a government administrative agency do not give rise to a justiciable controversy, save as they have fruition in action of a definite and concrete character, constituting an actual or threatened interference with the rights of persons complaining. To permit suits for declaratory judgments upon mere informal, advisory, administrative opinions might well discourage the practice of giving such opinons, wth a net loss of far greater proportions to the average citizen than any possible gain which could accrue."

67 It appears from the complaint and exhibits attached that the Chief Counsel of the Price Adjustment Board of the Maritime Commission has informed appellant that certain of its contracts are subject to the Renegotiation Act.[2] Appellant is in disagreement with the Chief Counsel. It has declined to discuss the matter with the Board or to give it any information. Instead it brings this action asking the court below to review the opinion of the Chief Counsel of the Board.

[1] 78 U. S. App. D. C. 71, 73-74, 137 F. (2d) 681 (1943). See also Miles Laboratories v. Fed. Trade Comm., 78 U. S. App. D. C. 326, 140 F. (2d) 683 (1944); Nat'l War Labor Bd. v. Montgomery Ward & Co., — U. S. App. D. C. —, 144 F. (2d) 528 (1944); cert. den., 65 Sup. Ct. 134.

[2] In this letter the Chief Counsel stated: "Pursuant to this direction, the Commission negotiated with the vessel owners. The vessels were made available, a charter party was signed with the British Ministry of War Transport for technical reasons but the Commission agreed to pay the vessel owner the agreed compensation for the use of the vessel. *This arrangement was evidenced by correspondence between the Commission and the vessel owner.* There appears to have been mutuality of understanding among all the parties interested, legality of consideration and definiteness as to terms, time of performance and acceptance. Payment was made in due course as agreed and this payment constitutes a part of the cost of the war to the people of the United States." [Italics supplied.]

The judgment of the court below dismissing the complaint is clearly correct. There is no case or controversy before the court. No administrative agency has made a decision of any kind which can be reviewed. The Price Adjustment Board before whom the appellant has been requested to appear has taken no action and made no recommendation.[4] But even if the Board had acted its decision would be only advisory. The Act authorizes the Chairman to delegate his authority by regulation. But he has done so only to a limited extent. He has given the Price Adjustment Board the authority only to make a preliminary determination of the proper contract price. No action to enforce that decision may be taken unless the Chairman by his order follows the recommendation of the Board.[5]

No right of appellant is prejudiced by the dismissal of this premature complaint. If the Chairman of the Commission unlawfully determines to withhold any sums due to appellant, appellant has its remedy by a suit on the contract. If the Chairman of the Commission decides to sue appellant for excess profits appellant may defend on the ground that the Chairman acted beyond his statutory authority. If the Chairman decides to compel appellant to furnish information on these contracts he must use a subpoena which can only be enforced by court proceedings in which appellant may make this same defense.[6]

68 Appellant's claim that it may be subject to criminal prosecution is equally insubstantial. A criminal prosecution requires first a formal order issued by the Chairman, second a wilful failure to comply with it.[7] No such order has been issued or threatened. Even if such order had been issued a court of equity would not interfere. Failure to obey the order based on a reasonable belief it was unlawful would not subject appellant to penalty for wilful disobedience.[8]

The effect of the majority's decision will be to permit any party who is asked to renegotiate a contract to bring an immediate suit in court by alleging that his particular contract is not subject to

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[3] Myers v. Bethlehem Shipbuilding Corp., 303 U. S. 41 (1938). This court stated in Doehler Metal Furn. Co. v. Warren, 76 U. S. App. D. C. 60, 62, 129 F. (2d) 43, 45, (1942): "The declaratory judgment Act, however, does not increase the jurisdiction of the federal courts, in the sense that, if a court has not had power over certain subject matter or over certain persons, the declaratory judgment Statute does not give it."

[4] The official notice of the Board concerning an initial conference contains the following:

"You are at liberty the initial conference to submit reasons why you cannot furnish the information within the requested period *as well as to state reasons why you are not subject to renegotiation.*" [Italics supplied.]

[5] Renegotiation Act of 1942, 56 Stat. 982, § 403 (f).

[6] Administrative Order No. 64.

[7] Cf. Elliott v. American Mfg. Co., 138 F. (2d) 678, 679 (C. C. A. 5th, 1943).

[8] The only request for information comes from the Price Adjustment Board. The Act requires as a basis for criminal prosecution an order from the Secretary of the Department involved which in this case means the Chairman of the Maritime Commission. See Sections 403 (e) and 403 (a) (2), *supra*, note 5.

[9] California v. Latimer, 305 U. S. 255, 260, 261 (1938).

the Act. On the filing of such a bill the renegotiation conferences must stop while the District Court makes an initial determination of the jurisdiction of the administrative agency.[10] It is naive to think that this device will not be used for purposes of delay.

Nothing in the Act or in the principles of orderly administrative procedure justifies intermeddling by this court in the complex business of renegotiation in absence of an order affecting appellant's rights.

69 In United States Court of Appeals for the District of Columbia

No. 8862—April Term, 1945

WATERMAN STEAMSHIP CORPORATION, APPELLANT

vs.

EMORY S. LAND, INDIVIDUALLY AND AS CHAIRMAN OF THE UNITED STATES MARITIME COMMISSION, ET AL., APPELLEES

Appeal From the District Court of the United States for the District of Columbia

Judgment

Filed June 18, 1945

This cause came on to be heard on the transcript of the record from the District Court of the United States for the District of Columbia, and was argued by counsel.

On consideration whereof, It is now here ordered and adjudged by this Court that the order of the said District Court appealed from in this cause be, and the same is hereby, reversed, and that this cause be, and it is hereby, remanded to the said District Court for proceedings in accordance with the opinion of this Court.

Per Mr. Chief Justice GRONER.

Dated June 18, 1945.

Dissenting opinion by Mr. Justice ARNOLD.

[10] Compare the language in Great Lakes D. & D. Co. v. Huffman, 319 U. S. 293, 299 (1943):

"It is true that the Act of Congress speaks only of suits 'to enjoin, suspend, or restrain the assessment, levy, or collection of any tax' imposed by state law, and that the declaratory judgment procedure may be, and in this case was, used only to procure a determination of the rights of the parties, without an injunction or other coercive relief. It is also true that that procedure may in every practical sense operate to suspend collection of the state taxes until the litigation is ended."

In the United States Court of Appeals for the District of Columbia

[Title omitted.]

70 *Designation of record*

Filed Aug. 27, 1945

The Clerk will please prepare a certified transcript of application to the Supreme Court of the United States for certiorari in the above-entitled case, including therein the following:

1. The printed record which appears in the form of a joint appendix to appellant's brief.
2. Appellant's motion for leave to substitute party appellee and to add parties appellees.
3. Opinion.
4. Judgment.
5. This designation.
6. Clerk's certificate.

Harold Judson,
HAROLD JUDSON,
Acting Solicitor General.
A. Morris Kobrick,
A. MORRIS KOBRICK,
Attorneys for Appellees.

Service of designation of record acknowledged this 27th day of August 1945.

BOS GEASLIN,
Counsel for Appellant.
By G. BLOOD.

United States Court of Appeals for the District of Columbia

Clerk's certificate

I, Joseph W. Stewart, Clerk of the United States Court of Appeals for the District of Columbia, hereby certify that the foregoing pages numbered from 1 to 91, both inclusive, constitute a true copy of the joint appendix to the briefs of the parties and the proceedings of the said Court of Appeals as designated by counsel for Appellees in the case of: Waterman Steamship Corporation, appellant vs. Emory S. Land, Individually and as Chairman of the United States Maritime Commission, et al., Appellees, No. 8862, April Term, 1945, as the same remain upon the files and records of said Court of Appeals.

71 In testimony whereof, I hereunto subscribe my name and affix the seal of said Court of Appeals, at the city of Washington, this thirtieth day of August A. D. 1945.

[SEAL] JOSEPH W. STEWART,
Clerk of the United States Court of Appeals for the District of Columbia.

72 Supreme Court of the United States

Order allowing certiorari

Filed November 5, 1945

The petition herein for a writ of certiorari to the United States Court of Appeals for the District of Columbia is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice JACKSON took no part in the consideration or decision of this application.

73 Supreme Court of the United States

Stipulation as to record

Filed Nov. 10, 1945

Subject to this Court's approval, it is hereby stipulated and agreed, by and between the attorneys for the respective parties hereto, that for the purpose of the hearing on Writ of Certiorari, the printed record shall consist of the printed record on Petition for Writ of Certiorari.

It is further stipulated and agreed that either of the parties hereto may refer in their briefs and argument to the original record filed in the Supreme Court of the United States, which has not been printed.

J. Howard McGrath,
J. HOWARD MCGRATH,
Solicitor General.

Dated this 9th day of November 1945.

Bon Geaslin,
BON GEASLIN,
Counsel for Respondent.

Dated this 9th day of November 1945.

[File endorsement omitted.]

U. S. GOVERNMENT PRINTING OFFICE: 1945